

# **THE SECURITIES ACT, 2016**

---

## **ARRANGEMENT OF SECTIONS**

### **PART I PRELIMINARY PROVISIONS**

#### Section

1. Short title
2. Interpretation
3. Application of Act to shares owned by Government
4. Exemption
5. Interpretation in other laws to apply
6. Relationship with other laws

### **PART II THE SECURITIES AND EXCHANGE COMMISSION**

7. Securities and Exchange Commission
8. Board of Commission
9. Functions of Commission
10. Commission to regulate foreign capital market operators and participants
11. Commission to prohibit certain activities by licensed persons
12. Commission's powers over assets of licensed person
13. Committees
14. Delegation of functions
15. Notification of regulatory decisions
16. Chief Executive Officer
17. Secretary
18. Other staff of Commission
19. Code of ethics

### **PART III LICENSING OF SECURITIES EXCHANGES AND CLEARING AND SETTLEMENT AGENCIES**

20. Establishing and maintaining securities market, securities exchanges and clearing and settlement agency
21. Application for securities exchange licence and clearing and settlement agency licence
22. Consideration and grant of securities exchange licence
23. Consideration and grant of clearing and settlement agency licence
24. Refusal to grant licence
25. Validity of licence
26. Variation of licence
27. Cancellation or suspension of licence
28. Appeals relating to licence

### **PART IV SELF-REGULATORY ORGANISATIONS**

29. Recognition of self-regulatory organisations
30. Delegation of powers to self-regulatory organisations
31. Rules for self-regulatory organisations

### **PART V**

## **LICENSING AND REGULATION OF CAPITAL MARKET OPERATORS**

32. Licensing of dealers
33. Licensing of investment advisers
34. Licensing of share transfer agents and representatives
35. Regulation of other capital market operators
36. Application for licences
37. Consideration and grant of licence
38. Conditions for refusal to grant licences
39. Validity, terms and conditions of licences
40. Variation of conditions of licences
41. Revocation of licences
42. Annual fee
43. Appeals to Tribunal
44. Register of licences
45. Records kept by licensed person
46. Information to be supplied by licensed person
47. Annual reports

## **PART VI CREDIT RATING AGENCIES**

48. Establishing and operating a credit rating agency
49. Consideration and grant of credit rating agency licence
50. Refusal to grant licence
51. Validity of licence and non-transferability, etc of license
52. Variation of licence
53. Cancellation of licence
54. Appeals relating to credit rating agency licence
55. Duties of credit rating agency
56. Code of Conduct
57. Methodologies, models and key rate assumptions
58. Disclosures
59. Records
60. Approval of external credit rating agencies
61. Rules for credit rating agencies

## **PART VII REGULATION OF SECURITIES EXCHANGES**

62. Power of Commission to give direction
63. Appeal against direction of Commission
64. Power of Minister to suspend business of securities
65. Management of securities exchange
66. Governance fitness standards
67. Exchange rules
68. Securities exchanges to assist Commission
69. Notification of changes and legal proceedings for misconduct
70. Annual reports
71. Amendment to exchange rules
72. Use of certain titles
73. Delegation of powers to securities exchange
74. Rules relating to securities exchanges

## **PART VIII**

## **REGISTRATION OF SECURITIES, REGISTERED SECURITIES AND TRADING ON SECURITIES EXCHANGE**

75. Registration of securities
76. Prospectus
77. Dealings in securities market not operated by securities exchange prohibited
78. Trading in listed registered securities
79. Trading in unlisted registered securities
80. Registered securities to be traded through licensed dealers
81. Continuing obligations for registered securities
82. Dematerialisation and maintenance of securities
83. Fungibility
84. Codes of ethics and governance for capital market
85. Contract notes
86. Terms of settlement for bargains in securities, etc.
87. Short-selling
88. Accounts to be kept by licensed persons
89. Financial resources rules
90. Investment advisory contracts

### **PART IX**

#### **REGULATION OF CLEARING AND SETTLEMENT AGENCIES**

91. Power of Commission to give directions to clearing and settlement agency
92. Appeal against direction of Commission
93. Power of Commission to suspend business of clearing and settlement agency
94. Notification of changes and legal proceedings for misconduct
95. Annual reports
96. Coordination of clearing and settlement agencies
97. Asset segregation in securities account
98. Exercising control over participant's account
99. Holders of record
100. Use of clearing and settlement agency as registered owner of securities
101. Transfer of securities into clearing and settlement agency
102. Transfer by record entry
103. Effecting transfer of pledge by record entry
104. Blocking account by record entry
105. Refusal to open account
106. Blocking account by court order
107. Settlement of securities
108. Limitation on rights of participants
109. Withdrawal of securities
110. Closure of securities register
111. Access to clearing and settlement agency records
112. Incorrect entry by clearing and settlement agency
113. No liability in extraordinary circumstances
114. Insolvency of participant
115. Insolvency of clearing and settlement agency
116. Utilisation of collateral upon insolvency
117. Winding up order
118. Netting agreements and procedures
119. Rectification of record by Tribunal
120. Order of Tribunal

### **PART X**

#### **COLLECTIVE INVESTMENT SCHEMES AND PRIVATE FUNDS**

- 121. Authorisation and regulation of schemes
- 122. Restriction on promotions
- 123. Authorisation of managers, trustees and custodians
- 124. Trustee or custodian to hold property
- 125. Authorisation of foreign schemes
- 126. Revocation of authorisation
- 127. Directions by Commission on revocation of authorisation
- 128. Rules for collective investment schemes
- 129. Authorisation of private fund
- 130. Rules for private fund

## **PART XI MERGERS AND TAKE-OVERS**

- 131. Scope of Part
- 132. Take-overs
- 133. Creation of mergers
- 134. Consideration of applications for proposed mergers
- 135. Power to investigate mergers or take-overs
- 136. Rules on mergers and take-overs

## **PART XII INSIDER TRADING**

- 137. Reports by insiders
- 138. Prohibition of insider dealing
- 139. Prohibition on disclosing price-sensitive information
- 140. Offence of insider trading
- 141. Disgorgement
- 142. Transaction not void or voidable
- 143. Exceptions to insider dealing
- 144. Defence of not soliciting information unavailable
- 145. Presumptions

## **PART XIII AUDITING AND CORPORATE RESPONSIBILITIES OF LISTED COMPANIES**

- 146. Filing of annual and periodic reports with Commission
- 147. System of internal control of companies
- 148. Commission to approve auditors of companies
- 149. Duty of auditor to report on internal controls of listed companies
- 150. Disclosure of quarterly earnings forecast by listed companies
- 151. Duty of directors to disclose interests in securities of listed company
- 152. Register of directors' interests in securities
- 153. Notification to Commission and securities exchange of directors' interests
- 154. Duty of substantial shareholders to disclose shareholdings
- 155. Subsequent disclosures by substantial shareholders
- 156. Registration of substantial shareholders shareholdings
- 157. Notification to Commission and listing exchange of substantial shareholders
- 158. Unclaimed dividends
- 159. Penalties for contravention of Part

## **PART XIV INFORMATION, INVESTIGATIONS, INSPECTIONS AND CO-OPERATION**

- 160. Power of Commission to request information
- 161. Investigations
- 162. Avoidance of duplication in investigations
- 163. Inspections
- 164. Destruction of documents
- 165. Co-operation with other regulators

## **PART XV CIVIL LIABILITY**

- 166. Liability for misrepresentations in prospectus
- 167. Liability for misrepresentations in other documents
- 168. Defences
- 169. Non-derogation from other rights
- 170. Action for rescission for misrepresentation in prospectus
- 171. Limitations on action
- 172. Leave to proceed
- 173. Notice of action
- 174. Restrictions on discontinuation, etc. of action
- 175. Rights of Commission to bring representative action

## **PART XVI COMPENSATION FUND**

- 176. Compensation Fund
- 177. Purpose of Fund
- 178. Compensation Fund Committee
- 179. Monies of Fund
- 180. Disbursements from Compensation Fund
- 181. Management of Fund
- 182. Limited liability of Fund and insurance by licensed persons
- 183. Recovery of disbursements from licensed defaulters

## **PART XVII CAPITAL MARKETS TRIBUNAL**

- 184. Establishment of Tribunal and jurisdiction
- 185. Members of Tribunal
- 186. Tenure of office of members of Tribunal
- 187. Funding and allowances of members of Tribunal
- 188. Appointment and functions of Registrar of Tribunal
- 189. Staff of Tribunal
- 190. Exercise of powers of Tribunal and procedure
- 191. Appeals to Tribunal
- 192. Notice of appeal
- 193. Hearings before Tribunal
- 194. Market misconduct proceedings
- 195. Appeal to Court of Appeal

## **PART XVIII OFFENCES ON IMPROPER TRADING PRACTICES**

- 196. Penalty in substitution of penalty units
- 197. Fraudulent transactions
- 198. False trading and manipulation of the market
- 199. Use of deceptive statements, etc. as inducements
- 200. False statements to securities exchanges, etc.

- 201. False or misleading statements on sale of securities
- 202. Damages for loss sustained
- 203. Failure to furnish information
- 204. Obstructing Commission, Chief Executive Officer, etc.

## **PART XIX**

### **MISCELLANEOUS PROVISIONS**

- 205. Fraudulent applications
- 206. Designation of compliance officer of licensed person
- 207. Commission's power over licensed persons
- 208. Association of Capital Market Operators
- 209. Disciplinary actions
- 210. Review by Commission
- 211. Codes and guidelines
- 212. Guidance notes, etc.
- 213. Access to documents
- 214. Control of advertisements
- 215. Offences committed partly in and partly out of Zambia
- 216. Continuing acts or offences
- 217. Actions by Commission on conviction of offence
- 218. Administrative penalties
- 219. Offence by body corporate or unincorporate body
- 220. General rules by Commission
- 221. Regulations
- 222. Repeal of Securities Act and savings

Schedules

# GOVERNMENT OF ZAMBIA

## ACT

### No. 41 of 2016

*Date of assent: 19<sup>th</sup> December 2016*

An Act to regulate the capital market so as to foster fair and efficient trading; to continue the existence of the Securities and Exchange Commission and provide for its functions and powers; to license and regulate securities exchanges, clearing and settlement agencies and self-regulatory organisations; to ensure the financial integrity of transactions and avoidance of systemic risk in the capital market; to provide for licensing and regulation of capital market operators; to provide for licensing and regulation of credit rating agencies and protect the integrity, transparency and reliability of the credit rating process and credit ratings; to provide for registration of securities and conduct of securities business; to provide for regulation of collective investment schemes; to prohibit insider dealing in securities and other offences; to provide for mergers and take-overs of listed companies and companies whose securities are registered with the Commission; to provide for auditing and corporate responsibility of listed companies and companies whose securities have been registered with the Commission; to continue the existence of the Compensation Fund; to establish the Capital Markets Tribunal; to repeal and replace the Securities Act, 1993 ; and to provide for matters connected with or incidental to the foregoing.

[27<sup>th</sup> December, 2016]

*Enactment*

ENACTED by the Parliament of Zambia

## PART I PRELIMINARY PROVISIONS

*Short title*

1. This Act may be cited as the Securities Act, 2016.

*Interpretation*

*Act No. 13 of  
2008*

2. In this Act, unless the context otherwise requires –  
 “auditor” has the same meaning assigned to it in the Accountants Act;  
 “authorisation” means any consent, permission, recognition or capacity given or granted by the Commission to a licensed person –  
 (a) for carrying on business, a transaction or a series of transactions as a capital market operator; or  
 (b) for doing any act or omitting to do any act incidental to business, a transaction or a series of transactions;  
 whether or not for a specific period;  
 “authorised person” means a person authorised to exercise the powers of the Commission as specified in this Act;  
 “bank” has the meaning assigned to it in the Banking and Financial Services Act;  
 “beneficial owner” means the ultimate owner of securities held in a securities account, excluding a nominee;  
 “blocked account” means an account that belongs to a holder of securities and which is the subject of a pledge, charge or judgment debt and in which the interest of the chargee, pledgee or judgment creditor has not been satisfied and notified to a clearing and settlement agency;  
 “board” means a board of a capital market operator;  
 “Board” means the Board of the Commission appointed in accordance with section eight;

*Cap. 387*

- “capital markets” means the market where securities are bought and sold;
- “capital markets operator” means a person whose securities are registered in accordance with this Act, or who is authorised, recognised or licensed in accordance with this Act to perform specific functions in the capital markets, including a person or entity, whether incorporated in the Republic or not, who is granted or receives authorisation from the Commission, an intermediary, nominee or a person conducting a professional development or asset management programme;
- “Chief Executive Officer” means the person appointed as Chief Executive Officer of the Commission in accordance with section *sixteen*;
- “clearing and settlement” means the –
- (a) process of preparing for settlement of a securities transaction which has been executed on a securities exchange;
  - (b) provision of clearing and settlement facilities; and
  - (c) determination of payment and delivery obligations of the parties to a securities transaction, whether or not on a net basis;
- “clearing and settlement agency” means a company that is licensed in accordance with this Act to –
- (a) be a depository of securities for purposes of clearing and settling securities transactions;
  - (b) provide clearing and settlement facilities;
  - (c) maintain records of trades in securities for purposes of settling claims for securities;
  - (d) maintain records of transfers and pledges of securities for purposes of permitting securities to be transferred by record entry; or
  - (e) hold security certificates deposited for purposes of permitting securities to be transferred by record entry;
- excluding a dealer, bank or financial institution acting exclusively in the ordinary course of its business;
- “clearing and settlement agency licence” means a licence granted to a company in accordance with section *twenty-three*;
- “clearing and settlement facility” means a system or mechanism provided by a clearing and settlement agency for the –
- (a) holding of securities in dematerialised form;
  - (b) presentation and exchange of data or documents in order to calculate the obligations of the participants in the system and to allow for the settlement of obligations;
  - (c) transfer of securities; and
  - (d) clearing services or arrangements that mutualise or transfer among participants the credit risk arising from securities transactions;
- excluding a clearing and settlement facility maintained by the Bank of Zambia, or an entity, facility, system or organisation that solely arranges or provides for -
- (a) settlement, netting or novation of obligations resulting from agreements, contracts or transactions on a bilateral basis;
  - (b) settlement or netting of cash payments through an inter-bank payment system; or
  - (c) settlement, netting or novation of obligations resulting from a sale of a commodity;
- “collective investment scheme” means a scheme in whatever form, including an open-ended investment company, where members of the public are



invited or permitted to invest money or other assets in a portfolio and in terms of which –

- (a) two or more investors contribute money or other assets to, and hold a participatory interest in, a portfolio of the scheme through shares, units or other form of participatory interest; and
- (b) the investors share the risk and the benefit of investment in proportion to their participatory interest in the portfolio of the scheme or as determined in the trust deed;

“Commission” means the Securities and Exchange Commission continued in existence in accordance with section *seven*;

“committee” means a standing or special committee of the Commission established in accordance with section *thirteen*;

“commodity” means virtual and non-virtual commodities, such as agricultural commodities, gold, silver, platinum, gemstones, minerals, carbon credits, emission permits, emission allowances, and includes other products commonly known as commodities and which are prescribed by rules made by the Commission;

Cap. 388

“company” has the meaning assigned to it in the Companies Act;

“contract note” means a document specified in section *eighty-five*;

“control” means the control of a company by a person who –

- (a) beneficially owns more than one half of the issued share capital of the company;
- (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;
- (c) is able to appoint or to veto the appointment of a majority of the directors of the company;
- (d) is a holding company and the company is a subsidiary of that company as provided for in the Companies Act;
- (e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; or
- (f) has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e);

Cap. 388

“Court” means the High Court for Zambia;

“credit rating” means an opinion regarding the creditworthiness of a licensed person, securities or an issuer;

“credit rating agency” means a person who provides credit rating services as provided in this Act;

“credit rating services” means the analysis, evaluation, approval, issuing or review of data and information for the purposes of credit rating;

“custodian” means a company authorised, in accordance with this Act, to have charge or custody of property, papers or other valuables;

“dealer” means a person specified in section *thirty-two* and who holds a dealer’s licence;

“dealer’s licence” means a licence granted to a company in accordance with section *thirty-seven* authorising a company to carry on a business as a dealer;

“dealing” means –

- (a) acquiring, disposing of, subscribing for or charging or pledging of, securities;
- (b) underwriting securities; or
- (c) making or offering to make with any person, or inducing or attempting to induce a person to enter into or offer to enter into, an agreement relating to –
  - (i) the acquisition or disposal of, subscription for or charging or pledging of, securities; or
  - (ii) underwriting of securities;

“debt fund” means a fund which invests primarily in debt securities of listed and unlisted investee companies according to the stated objectives of the fund;

“debt securities” means debt created or acknowledged in an instrument which is issued or proposed to be issued by a company, including debentures, debenture stock, loan stock, bonds, certificates of deposit, commercial paper and notes;

“defalcation” means a default, act of embezzling, failure to meet an obligation, misappropriation of trust funds or money held in any fiduciary capacity and failure to properly account for such funds;

“dematerialised” means uncertificated securities which represent a share, or other interest in property, of a company or an obligation of the issuer that is not represented by an instrument but is registered on the issuer’s records;

“depository” means a place where money or other valuable is placed and kept for safekeeping;

“disgorgement” means an act of giving up profits, as a result of insider dealing obtained in accordance with an order of the court issued as specified in section *one hundred and forty-one*;

“electronic” means the use of equipment for processing, digital compressing, storing and transmitting data or employing wires, radio, optical technology or any electromagnetic method for such purpose, and includes an electronic signature attached to, incorporated in or logically associated with other data and which is intended by the user to serve as a signature, and “electronically” shall be construed accordingly;

“electronic book entry system” means an electronic arrangement that permits the holding of securities, whether or not represented by scrip, and which permits the transfer of ownership or interest in those securities by electronic adjustments through securities accounts without physical movement or physical exchange of scrip or endorsement, and “book entry” shall be construed accordingly;

“electronic trading facility” means a trading facility that -

- (a) operates by means of an electronic or telecommunications network; and
- (b) maintains an automated audit trail of bids, offers and the matching of orders or the execution of /securities transactions;

“exchange” means a securities exchange which is licensed in accordance with section *twenty-two*;

“exchange rules” means rules made by a securities exchange and approved by the Commission;

“fit and proper” means the criteria set by the Commission in accordance with rules made under section *two hundred and twenty-one*;

“foreign collective investment scheme” means a collective investment scheme declared to be an authorised scheme in accordance with section *one hundred and twenty-five*;

- “Fund” means the Compensation Fund established in accordance with section *one hundred and seventy-six*;
- “hedge fund” means a fund which pools funds from sophisticated investors, employs diverse or complex trading strategies, and invests and trades in securities having diverse risks or complex products including listed and unlisted derivatives;
- “insider” means a person who –
- (a) is connected with a listed company in one or more of the following capacities:
    - (i) director of the company or of a related company;
    - (ii) officer of the company or of a related company;
    - (iii) employee of the company or of a related company;
    - (iv) independent contractor of the company who is involved in a professional or business relationship with the company;
    - (v) shareholder of the company or any person who has or can be considered to have a relationship with the company or shareholder;
    - (vi) member of the audit committee of the company;
  - (b) has inside information where the person knows that the direct or indirect source of the information was a person specified in paragraph (a);
  - (c) obtains inside information from a person specified in paragraph (b); and
  - (d) by virtue of having been connected with the company in any other way, possesses unpublished price-sensitive information in relation to the securities of the company;
- “insider dealing” means trading in securities by an insider for the benefit of the insider or any other person;
- “investment adviser” means a person specified in section *thirty-three* and who holds an investment adviser’s licence;
- “investment adviser contract” means a contract entered into between an investment adviser and a client to, provide advice on the value of securities or investing in securities, or manage an investment or trading account of a client;
- “investment adviser’s licence” means a licence granted to an investment adviser in accordance with section *thirty-seven*;
- “investment company” means a company having, as its purpose, the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of the company;
- “issuer” means a person or other entity that issues, has issued or proposes to issue, securities to the public in accordance with this Act;
- “licence” means a licence granted in accordance with this Act and “licensed” shall be construed accordingly;
- “licensed person” means a person who is granted a licence, as the case may be, in accordance with this Act;
- “listed company” means a company whose securities have been registered with the Commission and which has been admitted to trade its securities on a securities exchange;
- “listed securities” means securities of a listed company;
- “listing exchange” means the securities exchange on which listed securities are traded;
- “listing requirements” means the requirements, issued by a licensed exchange and approved by the Commission, which must be met before

securities are listed on the securities exchange, traded or continue to be traded on the exchange;

“manager” means a person who-

- (a) holds a dealer’s or investment adviser’s licence;
- (b) directs the business, operations and affairs of a collective investment scheme; and
- (c) is authorised in accordance with section *one hundred and twenty-three*;

“marked to market” means re-valued for purposes of the seller’s obligations at the current market value;

“market misconduct” includes –

- (a) the use or disclosure of price-sensitive information contrary to this Act;
- (b) engaging in improper trading practices as provided in Part XVIII;
- (c) failure to comply with any provision of this Act; and
- (d) a conviction of an offence under this Act;

“material change” means a change in the business, operations, assets or ownership of an issuer that could reasonably be expected to have a significant effect on the market price or value of the securities of the issuer, and includes a decision to implement a change made by the issuer;

“material fact” means a fact that significantly affects or could reasonably be expected to significantly affect the market price or value of the securities of the issuer;

“merger” means an amalgamation of two or more entities, where an entity, directly or indirectly, acquires or establishes control over the whole or part of the business of another entity or where two or more entities mutually agree to adopt arrangements for common ownership or control over the whole or part of a business, and includes an acquisition by an entity outside Zambia which affects Zambian entities;

“misrepresentation” means –

- (a) an untrue statement of a material fact; or
- (b) an omission to state a material fact that is required to be stated or is necessary to prevent a statement that is made from being false or misleading in the circumstances in which it is made;

“muted return” means a return on investment which may be lower than prevailing returns for similar investments;

“netting” means the process of reducing multiple obligations for fewer settlement obligations or to a single settlement obligation;

“nominee” means a person authorised by a beneficial owner of securities to hold the securities in custody for that beneficial owner;

“officer” means an employee of the Commission;

“open-ended investment company” means a company whose articles of association authorise the acquisition of its own shares structured in such a manner that it provides for the issuing of different classes of shares to investors, with each class of shares representing a separate portfolio having a distinct investment policy;

“participant” means a person who receives services from a clearing and settlement agency, other than exclusively –

- (a) through another person who is a participant; or
- (b) as a pledgee, judgment creditor or beneficial owner; for whom a blocked account in a clearing and settlement facility has been established;

- “participating clearing bank” means a bank which is assigned or appointed to provide banking and other facilities, to an exchange, a clearing and settlement agency and members of an exchange, to facilitate clearing and settlement functions;
- “pledge” means a contractual interest in a security that is delivered to, retained by, or considered to be in the possession of, a creditor to secure payment of a debt or other obligation;
- “price-sensitive information” means a material fact or material change that is not generally available or disclosed in relation to registered securities and if it were generally known, would likely materially affect the price of the securities;
- “primary market” means the market in which securities are issued or traded for the first time, including a market where a company seeks to raise funds from investors in exchange for the company’s securities;
- “private equity fund” means a fund which pools funds from sophisticated investors to invest in a private company for the purpose of generating or making returns on their growth;
- “private fund” means a fund established in the form of a limited liability company or a trust or any other legal form that is acceptable to the Commission which —
- (a) is a private equity fund, venture capital fund, social venture fund, hedge fund, debt fund or any type of fund declared by the Commission, from time to time, to be a private fund;
  - (b) is a privately pooled investment that collects funds from sophisticated investors for investing in accordance with a defined investment policy for the benefit of its investors;
  - (c) is a closed ended fund with specific tenure; or
  - (d) raises funds through subscriptions by way of private placements only and not through public subscription;
- “prospectus” means a notice, circular, brochure, advertisement, publication or request issued in paper or other document, whether electronic or otherwise, inviting applications or offers from the public to subscribe or purchase, or offering to the public for subscription or purchase, a share in or debenture of a company or proposed company, and includes a statement attached to or intended to be read with the prospectus;
- “public body” means the Government, a Ministry or department of the Government, the National Assembly, a local authority, parastatal, council, authority, the Commission or other body appointed by the Government or established by any other written law;
- “public company” has the meaning assigned to it in the Companies Act;
- “public debt securities” means loan stock, bonds and other instruments creating or acknowledging indebtedness by or on behalf of a public body or central bank;
- “registered owner” means a person who is, or is presumed to be, shown on the securities register of an issuer as the owner of securities or holds a securities certificate issued by the issuer;
- “registered securities” means securities that have been registered in accordance with section *seventy-five*;
- “repealed Act” means the Securities Act, 1993, repealed in accordance with section *two hundred and twenty-two*;
- “reporting issuer” means an issuer —
- (a) who has made an offer of securities, by way of a prospectus, before or after the commencement of this Act;

Cap. 388

Cap. 354

- (b) who has made, by way of a merger, take-over or similar procedure, an offer for securities;
  - (c) whose securities are listed on a securities exchange in Zambia; or
  - (d) who has not less than fifty shareholders;
- “representative” means a person who is employed by, or acts for, a dealer or an investment adviser and who performs for that dealer or investment adviser any of the functions of a dealer or investment adviser, other than the work ordinarily performed by accountants, legal practitioners, clerks or cashiers, whether or not remuneration is paid, and holds a representative’s licence;
- “representative’s licence” means a licence granted in accordance with section *thirty-seven*;
- “rules” in relation to a securities exchange, a clearing and settlement agency or a self-regulatory organisation means the rules governing the members, by whatever name called and wherever contained, and includes rules contained in the articles of association of the securities exchange, clearing and settlement agency or self-regulatory organisation;
- “sandbox framework” means a regulatory framework under which a company can test its proposed financial technology or other innovative products, services or solutions in a live environment under a pre-determined set of conditions and limitations;
- “Secretary” means the person appointed Secretary to the Commission in accordance with section *seventeen*;
- “securities” means –
- (a) shares;
  - (b) debt securities;
  - (c) public debt securities;
  - (d) derivatives;
  - (e) any rights, options or derivatives in respect of any such shares, debt securities or public debt securities;
  - (f) any rights under a contract to secure a profit or avoid a loss by reference to fluctuations in –
    - (i) the value or price of any shares, debt securities or public debt securities;
    - (ii) the value or price of a group of shares, debt securities or public debt securities; or
    - (iii) an index of shares, debt securities or public debt securities;
  - (g) unit trusts and interests under collective investment schemes;
  - (h) commercial paper;
  - (i) depository receipts;
  - (j) warehouse receipts; or
  - (k) any other instrument commonly known as securities or which are prescribed by rules made by the Commission;
- excluding treasury bills, bills of exchange, promissory notes, certificates of deposit issued by a bank, or any other instrument prescribed by rules, made by the Commission, not to be securities for the purposes of this Act;
- “securities certificate” means an instrument issued by, or on behalf of, an issuer that is evidence of an interest in securities;
- “securities exchange” means an exchange established and operated by a company licensed to do so in accordance with section *twenty-two*;



- “securities market” means a place where, or facility, whether electronic or otherwise, by which –
- (a) trading in securities is regularly undertaken;
  - (b) invitations are intended, or may reasonably be expected, to result, whether directly or indirectly, in securities transactions; or
  - (c) information is regularly provided on the prices at which, or the consideration for which, particular persons or particular classes of persons propose, or may reasonably be expected, to undertake securities transactions;
- “securities transaction” means the process or system through or by which securities are traded;
- “self-regulatory organisation” means an organisation that regulates the operations and standards of practice and business conduct of its members and their representatives and which is recognised by the Commission in accordance with section *twenty-nine*;
- “senior management” means the chief executive officer, chief financial officer and executive director of a company, licensee or issuer, or any person performing similar functions;
- “settlement” means the completion of a securities transaction, in accordance with this Act, through the final transfer of securities and monies between the buyer and seller;
- “settlement guarantee fund” means a fund established by a clearing and settlement agency in accordance with paragraph (e) of subsection (1) of section *twenty-three*;
- “shares” means an ownership interest or stocks issued or proposed to be issued by a company in the capital of the company;
- “share transfer agent” means –
- (a) a person who, on behalf of an issuer –
    - (i) creates and maintains the records of holders of securities issued by an issuer;
    - (ii) deals with all matters connected with the transfer, issue, cancellation and redemption of its securities;
    - (iii) safeguards securities and funds; and
    - (iv) distributes dividends; or
  - (b) a department or division, by whatever name called, of a listed company performing the activities referred to in paragraph (a), if at any time the total number of the holders of the company’s securities exceed a prescribed amount;
- “short sale” means a sale of a security that the seller or seller’s principal does not own, or has not contracted for, at the time of sale or which requires the seller to borrow in order to make delivery;
- “social venture fund” means a fund which invests primarily in social ventures, and which satisfies social performance norms laid down by the fund and whose investors may agree to receive restricted or muted returns;
- “sophisticated investor” means an experienced investor or a person to whom an offer is made and who has previous experience in investing in securities that allows that person to assess the —
- (a) merits of the offer;
  - (b) value of the securities;
  - (c) risks involved in accepting the offer;
  - (d) person’s own information needs; and
  - (e) adequacy of the information.
- “subsidiary” has the meaning assigned to it in the Companies Act;

- “substantial shareholder” means a person who is the beneficial owner of, or is in a position to exert control over, not less than fifteen percent of the shares of a body corporate;
- “take-over” means the acquisition by a person of sufficient shares in a company to give the acquirer control over that company, and includes an acquisition by a person outside Zambia which affects Zambian companies;
- “take-over bid” means an offer or invitation to treat made for the purpose of a take-over as provided in section *one hundred and thirty-two*;
- “Tribunal” means the Capital Markets Tribunal established in accordance with section *one hundred and eighty-four*;
- “trust deed” means an agreement drawn up between the trustees and the managers, or between such persons approved by the Commission, for purposes of regulating the operations of a collective investment scheme, funds, debentures, bonds or other schemes approved by the Commission;
- “trustee” means a person who is authorised by the Commission in accordance with section *one hundred and twenty-three*;
- “underwriter” means-
- (a) a dealer who has temporarily purchased securities from an issuer with a view to offering or selling the securities for the issuer in connection with the distribution of such securities or participates or has a direct or indirect participation in any such undertaking, excluding a person whose interest is limited to a commission from an underwriter or a dealer which is not in excess of the usual and customary distributor’s or seller’s commission; or
  - (b) a person who is not a dealer but who obtains approval from the Commission to act as an underwriter in a particular transaction in compliance with rules prescribed by the Commission;
- and “underwriting” shall be construed accordingly;
- “units” means sub-divisions of a beneficial interest in the assets of a collective investment scheme or of any other scheme approved by the Commission;
- “unit trust” means any scheme or arrangement in the nature of a trust where members of the public are invited or permitted, as beneficiaries under the trust, to acquire an interest or undivided share in one or more groups or blocks of specified securities and to participate proportionately in the income or profits derived under the trust;
- “unlisted securities” means securities that are not listed on a securities exchange; and
- “venture capital funds” means risk capital by investors to start-up firms and small and medium sized businesses with perceived high growth potential.

*Application of Act to  
shares owned by  
Government*

3. Notwithstanding any other provision to the contrary, this Act shall equally apply to public offerings of securities in a listed company owned by the Government.

*Exemption*

4. (1) A transaction in government securities traded in the primary market shall be exempt from this Act.
- (2) The Commission may, by notice in the *Gazette* and a daily newspaper of general circulation in Zambia, exempt a person or any securities from the application of this Act.



*Interpretation in  
other laws to apply  
Cap. 388  
Cap 387*

5. In this Act, unless the context otherwise provides, words and expressions used and which are not defined, but are defined in the Companies Act or Banking and Financial Services Act, shall have the meaning assigned to them in those Acts.

*Relationship with  
other laws*

6. Where there is an inconsistency between this Act and any other written law, the provisions of this Act shall prevail to the extent of the inconsistency.

## PART II THE SECURITIES AND EXCHANGE COMMISSION

*Securities and  
Exchange  
Commission*

7. (1) The Securities and Exchange Commission, established in accordance with the repealed Act, is continued in existence as a body corporate, with a common seal, capable of suing and being sued and, subject to this Act, of performing all such acts as a body corporate may by law do or perform.

(2) The First Schedule applies with respect to the Commission and the Board.

*Board of  
Commission*

8. (1) There is constituted the Board of the Commission which shall be responsible for the implementation of this Act and shall, subject to this Act –

- (a) exercise the functions of the Commission as provided in this Act;
- (b) oversee the administrative affairs of the Commission by putting in place effective, efficient and transparent systems of corporate governance and, in doing so, shall -
  - (i) ensure sound financial management structures and processes, including financial, risk management and internal audit controls;
  - (ii) provide strategic direction to the Commission and approve the annual work plan and activity programmes of the Commission as recommended by the Chief Executive Officer;
  - (iii) ensure that the Commission builds sufficient human resource, technical and scientific capacity within the Commission;
  - (iv) determine the structure and staffing levels of the Commission;
  - (v) approve the budget estimates of the Commission and ensure that the Commission receives adequate funding for its operations;
  - (vi) ensure the prevention of irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not complying with the operational and financial policies of the Commission;
  - (vii) ensure that the members of the Commission, members of committees and officers act in a manner consistent with the objectives and

functions of the Commission, the Commission's corporate governance charter and this Act; and

(viii) ensure that officers perform their functions efficiently and effectively; and

(c) do every act or thing that is required to be done by the Board as specified in this Act.

(2) The Minister shall appoint seven persons as non-executive members of the Board from a nomination made by each of the following organisations:

- (a) Bank of Zambia;
- (b) Law Association of Zambia;
- (c) Zambia Institute of Chartered Accountants;
- (d) Zambia Chamber of Commerce and Industry;
- (e) Ministry responsible for finance;
- (f) Ministry responsible for justice; and
- (g) Pensions and Insurance Authority

(3) The Chief Executive Officer shall be an ex-officio member of the Board.

(4) The members of the Board shall elect, from amongst their number, the Chairperson and Vice-Chairperson of the Board.

(5) The Minister shall, when making appointments in accordance with subsection (2), ensure that fifty percent of each gender is nominated and appointed as members, unless it is not practicable to do so.

(6) A person shall not be appointed or hold office as a member of the Board if the person—

- (a) is an undischarged bankrupt;
- (b) is of unsound mind; or
- (c) has been convicted of an offence under this Act or of an offence involving fraud or dishonesty.

#### *Functions of Commission*

9. (1) The Commission shall create and promote conditions in the capital market aimed at ensuring an orderly growth, integrity and development of the capital markets.

(2) Notwithstanding the generality of subsection (1), the Commission shall –

- (a) ensure compliance with this Act and regulations or rules made in accordance with this Act;
- (b) license securities exchanges, regulate the activities of securities exchanges and the settlement of securities transactions;
- (c) license and regulate capital market operators;
- (d) license and regulate clearing and settlement agencies and other participants in the capital market;
- (e) license and regulate credit rating agencies and provide conditions for the issuing of credit ratings;
- (f) approve the constitutions, charters, articles, by-laws and rules governing and pertaining to securities exchanges, clearing and settlement agencies and other participants in the capital markets;
- (g) promote and encourage high standards of investor protection and integrity among members of securities exchanges, capital market operators, clearing and settlement agencies, self-regulatory organisations and other participants in the capital market;

- (h) support the operation of a free, orderly, fair, secure and properly informed capital markets;
- (i) regulate the manner and scope of securities transactions;
- (j) regulate margin requirements, capital adequacy requirements, disclosure and reporting requirements and clearing and settlement requirements, as may be prescribed;
- (k) take all reasonable steps to safeguard the interest of persons who invest in securities and guard against illegal and improper practices as provided in this Act;
- (l) authorise the establishment of collective investment schemes and other schemes;
- (m) regulate the activities of managers, trustees and custodians;
- (n) authorise and regulate the establishment of **private funds**;
- (o) consider and suggest proposals for the reform of this Act and rules and regulations made in accordance with this Act;
- (p) promote and develop a system of self-regulation by securities exchanges, clearing and settlement agencies, self-regulatory organisations, other participants in the capital market and capital market operators, as may be prescribed;
- (q) encourage the development of securities and securities exchanges and the increased use of such exchanges;
- (r) provide, promote or otherwise support financial education, awareness and confidence with regard to financial products, institutions and services;
- (s) prescribe certification standards and accreditation for licensees;
- (t) co-operate with, provide assistance to, receive assistance from, and exchange information with, other regulatory bodies and trade organisations in Zambia and elsewhere;
- (u) exercise and perform such other functions as may be conferred or imposed upon it by or in accordance with this Act or any other written law; **and**
- (v) **vet a substantial shareholder in accordance with the vetting criteria contained in guidelines issued by the Commission, including the substantial shareholder's source of funds, and the beneficial owner of a company whose securities are registered, or which is authorised or licensed under this Act.**

(3) The Commission may, for the purposes of achieving the objectives of this Act, implement a risk-based approach in the supervision and regulation of capital markets, and in combating money laundering and countering the financing of terrorism, proliferation, proliferation financing or any other serious offence.

(4) Subject to terms and conditions that the Commission may determine, the Commission may use a sandbox framework to supervise new market products, platforms and other innovations in a controlled environment.

(5) In this section, "innovation" shall mean a proposed financial technology or financial product, service or solution that does not exist in the

capital markets or has characteristics that are significantly different from existing ones.

*Commission to regulate foreign capital market operators and participants*

10. (1) The Commission shall regulate foreign capital market operators and participants operating in the Zambian capital markets.

(2) The Minister shall, by statutory instrument, prescribe the securities services that may be provided and the functions and duties that may be performed by foreign capital market operators and participants in the capital markets.

11. *Repealed by Act No. 21 of 2022 [see new Part IIA]*

12. *Repealed by Act No. 21 of 2022 [see new Part IIA]*

*Committees*

13. (1) The Board may, for the purpose of performing its functions, constitute standing and special committees and delegate to the committees such of its functions as it considers necessary.

(2) The Board may appoint as members of a committee, constituted in accordance with subsection (1), persons who are or are not members of the Board, who shall hold office for such period as the Board may determine.

(3) A meeting of a committee, constituted in accordance with subsection (1), shall be held at such times and places as the committee may determine or as the Board shall direct.

(4) The Board may refer a matter to a committee, constituted in accordance with subsection (1), for consideration of, or inquiry or management by, the committee.

(5) The Board may appoint a member of a committee to be the chairperson of the committee.

(6) Where the Board does not appoint a chairperson, in accordance with subsection (5), the committee shall elect one of its members to be the chairperson of the committee.

(7) Subject to this Act and any specific or general direction of the Board, a committee, constituted in accordance with subsection (1), may regulate its own procedure.

*Delegation of functions*

14. (1) The Board may delegate to a committee or the Chief Executive Officer such of the functions of the Commission as the Board considers necessary or expedient for the better performance of the functions of the Commission.

(2) The Board may impose such conditions and issue such guidelines relating to the performance of a function delegated in accordance with subsection (1).

(3) A delegation made in accordance with this section shall not prevent the Board from performing the function so delegated.

(4) A person who is directly affected by a decision of a committee or the Chief Executive Officer made in the performance of a delegated function may, by notice in writing to the Board, within thirty days after the person has been notified of the decision, request a review of the decision by the Board.

(5) The Board may, after due consideration of the decision that was the subject of review, as provided in subsection (4), confirm the decision or make such other decision as the Board considers appropriate to the case, and shall inform the party requesting the review of the decision, giving the reasons for the Board's decision.

(6) Notwithstanding that a person has requested a review of a decision, as provided in subsection (4), the decision under review by the Board shall take effect immediately, but the Board may grant a stay until the review has been disposed of.

*Notification of  
regulatory  
decisions*

15. (1) The Chief Executive Officer shall give notice of, and publish, prescribed regulatory decisions in such form and manner as the Board may specify.

(2) A notice of a prescribed regulatory decision shall set out the regulatory decision and the reasons for the decision.

*Chief Executive  
Officer*

16. (1) The Board shall appoint a Chief Executive Officer of the Commission, who shall hold office on such terms and conditions as the Board shall determine.

(2) The Chief Executive Officer shall be responsible, under the general direction of the Board, for –

- (a) the management and administration of the affairs of the Commission;
- (b) the implementation of the decisions of the Board; and
- (c) any other function assigned or delegated to the Chief Executive Officer by the Board or in accordance with this Act.

(3) Except as otherwise provided in this Act, where the Board has delegated to the Chief Executive Officer the power to grant, vary, cancel or renew a licence, recognition or authorisation, the Chief Executive Officer shall do so in accordance with –

- (a) conditions specified in this Act;
- (b) regulations issued in accordance with this Act;
- (c) guidelines established by the Board; and
- (d) any direction, in writing, not inconsistent with this Act, given by the Board.

(4) The Chief Executive Officer shall attend meetings of the Board as an ex-officio member and may address those meetings, but shall not vote on any matter.

(5) The Chief Executive Officer shall furnish the Minister, on approval of the Board, such information relating to the activities and undertakings of the Commission, as the Minister may require.

*Secretary*

17. (1) The Board shall appoint a Secretary to the Board on such terms and conditions as the Board shall determine.

(2) The Secretary shall, under the general direction of the Chief Executive Officer, be responsible for the corporate secretarial affairs of the Commission.

(3) The Secretary shall perform such other functions as directed by the Board, under the general supervision of the Chief Executive Officer.

*Other staff of  
Commission*

18. The Board may appoint, on such terms and conditions as the Board shall determine, such other professional, administrative and technical officers, inspectors, and other employees as may be necessary for the performance of the functions of the Commission.

*Code of ethics*

19. (1) The Minister may, by statutory instrument, prescribe a code of ethics for the members of the Board.

(2) The Board shall prescribe a code of ethics for the Chief Executive Officer, the Secretary and other staff of the Commission.

## PART IIA

### SUPERVISORY POWER OF COMMISSION OVER CAPITAL MARKETS OPERATOR

*Commission to prohibit  
certain activities by  
capital markets  
operator*

19A. (1) The Commission may, by notice in writing, prohibit a capital markets operator from doing any of the following:

- (a) entering into a securities transaction of a class or description specified in the notice or entering into the transaction otherwise than in circumstances so specified or to an extent so specified;
- (b) soliciting business from persons of a specified class or description or from persons other than persons of such a class or description; or
- (c) carrying on business in a specified manner.

(2) A prohibition notified in accordance with this section may relate to a transaction entered into for, or in connection with, the purposes of the business in respect of which the capital markets operator is licensed.

*Supervisory action  
over capital markets  
operator*

19B. (1) The Commission shall take supervisory action against a capital markets operator where —

- (a) the capital markets operator fails or refuses, without reasonable excuse, to comply with an order or directive of the Commission under this Act;
- (b) the capital markets operator obstructs, or refuses, without reasonable excuse, to permit an inspection or review in accordance with this Act; or
- (c) an inspection, review or investigation of the capital markets operator shows that the capital markets operator —
  - (i) conducts its business in breach of a written law;
  - (ii) engages in conduct that is unsafe or unsound;
  - (iii) is unable, or likely to become unable, to continue its operations in the ordinary course of its business for any reason;
  - (iv) is insolvent; or
  - (v) has a capital adequacy that is less than the prescribed minimum.

(2) Supervisory action that the Commission may take includes —

- (a) taking possession of a capital market operator;
- (b) appointing a manager to run the affairs of the capital markets operator;
- (c) suspending the licence of the capital markets operator for a specified period not exceeding six months; or
- (d) revoking or cancelling the licence of the capital markets operator.

(3) Where the Commission appoints a manager under subsection (2)(b), the costs of managing the possession shall be borne by the capital markets operator.

(4) The Commission may, where the Commission takes possession of a capital markets operator or appoints a manager to run the affairs of a capital markets operator in accordance with subsection 2(a) and (b), take any of the following actions:



- (a) freeze or restrict the use of assets, including bank accounts;
- (b) place a member of staff of a capital markets operator on leave while the possession is in effect;
- (c) close the capital markets operator;
- (d) run the affairs of the capital markets operator;
- (e) transfer all or part of the business of the capital markets operator to another capital markets operator;
- (f) dispose of some or all of the assets of the capital markets operator;
- (g) sell the capital markets operator as a going concern;
- (h) restructure or reorganise the capital markets operator; or
- (i) take any other action that the Commission considers necessary for the protection of investor interests or to enable the Commission to carry out its functions under this Act.

(5) The Commission or a manager appointed to run the affairs of a capital markets operator shall, within ninety days of taking possession of a capital markets operator, prepare a statement of affairs showing the financial position of the capital markets operator.

(6) Where the Commission decides to close a capital markets operator in accordance with subsection (3)(c), the closure shall take effect by revoking or cancelling a licence issued under this Act and the Commission shall recommend to an appropriate authority to place the capital markets operator under liquidation.

(7) The qualifications and duties of a manager appointed under this section shall be as specified in guidelines issued by the Commission.

*Commission's power over assets of capital markets operator*

19C. (1) The Commission may, as regards an asset of a capital markets operator, whether in the Republic or elsewhere, by notice, in writing —

- (a) prohibit the capital markets operator from disposing of the asset or dealing with the asset in a manner specified in the notice;
- (b) require the capital markets operator to deal with the asset in a manner specified in the notice; or
- (c) prohibit the capital markets operator from pledging the assets as security or collateral for borrowings.

(2) The Commission shall, in addition to serving a notice on a capital markets operator, register the notice under subsection (1) with the relevant assets registry.

(3) The Commission may, by notice in writing, require a capital markets operator to maintain, in the Republic, assets of a value that the Commission considers necessary to ensure that the capital markets operator is able to meet that capital markets operator's liabilities in respect of the capital markets operator's business regulated under this Act.

(4) The Commission may, in writing, issue a directive to a capital markets operator for the purposes of any requirement in this section that assets of a specified class or description shall, or shall not, be taken into account.

*Supervisory powers of Commission on anti-money laundering and countering financing of terrorism or proliferation*

19D. The Commission shall exercise supervisory powers over a capital markets operator to prevent and combat money laundering and

counter the financing of terrorism, proliferation, proliferation financing or any other serious offence.

*Undercapitalised  
capital markets  
operator*

19E. (1) The Commission shall, where a capital markets operator is or is likely to be under-capitalised, in addition to the actions specified under section 19B, take the following actions against the capital markets operator:

- (a) order the capital markets operator to submit to the Commission, a capital restoration plan within thirty days of the order;
- (b) require the capital markets operator to increase the capital to prescribed levels, within ninety days of the submission of a capital restoration plan; and
- (c) prohibit the capital markets operator from awarding a bonus or an increment to the emoluments and other benefits of a director and senior management of the capital markets operator.

(2) The Commission may, in addition to the actions under subsection (1), appoint a suitably qualified and competent person to advise and assist the capital markets operator in designing and implementing a capital restoration plan at the cost of the capital markets operator.

(3) A person appointed under subsection (2) shall report to the Commission on the progress being made on the design and implementation of the capital restoration plan, at intervals as the Commission may determine.

(4) The Commission shall, where the Commission takes action in accordance with subsection (1) or (2), and the capital markets operator fails, refuses or neglects to comply with a directive of the Commission —

- (a) impose restrictions on increasing the size of the assets or liabilities of the capital markets operator as the Commission may determine;
- (b) require the capital markets operator to remove from office any senior management responsible for the non-compliance; or
- (c) order the capital markets operator to take any appropriate action to correct the capital deficiency of the capital markets operator.

(5) In this section, a capital markets operator shall be considered to be under-capitalised if the capital markets operator does not fully comply with any prescribed capital adequacy requirements.

*Significantly  
undercapitalised  
capital markets  
operator*

19F. (1) The Commission shall, where a capital markets operator is significantly under-capitalised and in addition to the actions specified under sections 19B and 19E, take any of the following actions against the capital markets operator:

- (a) direct the board of the capital markets operator to correct the significant under-capitalisation within ninety days of the issue of the directive, and restore capital adequacy within one hundred and eighty days of the issue of the directive or a shorter period as the Commission may specify in the directive;
- (b) restrict the licence of the capital markets operator;
- (c) vary the conditions of the licence of the capital markets operator;
- (d) suspend the licence of the capital markets operator; or



(e) cancel the licence of the capital markets operator.

(2) For the purposes of this section the Commission shall determine what constitutes significant under-capitalisation in accordance with a risk based approach or other methodology adopted by the Commission.

(3) The Commission shall, in writing, prepare and submit a state of affairs for the Minister on the supervisory action taken against a capital markets operator in accordance with this section.

*Supervisory actions  
take precedence*

19G. The corrective actions carried out by the Commission under sections 19E and 19F shall take precedence over any discretionary corrective actions available to the Commission as specified in this Act.

*Recommendation to  
wind up capital markets  
operator  
Act No. 9 of 2017  
Act No. 9 of 2017*

19H. Despite section 56 of the Corporate Insolvency Act, 2017, the Commission may, where the Commission considers it necessary to protect the interest of an investor, recommend to the investor to present a petition to court to wind-up a capital markets operator's business under the Corporate Insolvency Act, 2017, on the ground that it is just and equitable that the capital markets operator is wound-up.

*Appeals against  
decisions under this  
Part*

19I. (1) (1) A capital markets operator that is aggrieved with a decision of the Commission under this Part may, within thirty days of the decision, appeal to the Tribunal.

(2) The decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal.

(3) Despite subsection (2), the Tribunal may, on sufficient grounds shown, stay the Commission's decision.

*Exemption of Part*

19J. (1) This part shall not apply to a person whose securities are registered with the Commission.

(2) Despite subsection (1), section 19D shall apply to a person whose securities are registered with the Commission.

### PART III LICENSING OF SECURITIES EXCHANGES AND CLEARING AND SETTLEMENT AGENCIES

*Establishing and  
maintaining securities  
market, securities  
exchange and clearing and  
settlement agency*

20. (1) A person shall not –
- (a) establish or maintain a securities market that is not a securities exchange in accordance with the requirements of this Act;
  - (b) establish, maintain or hold out as providing or maintaining a securities exchange unless that person is licensed in accordance with this Act; or
  - (c) assist in establishing or maintaining, or hold out as providing or maintaining, or carrying on a business as, a clearing and settlement agency that is not established and operated by a company licensed in accordance with this Act.

(2) A person that contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*Application for  
securities exchange  
licence and clearing  
and settlement  
agency licence*

21. (1) A company may apply to the Commission, in the prescribed form and manner, for a licence to establish and operate a –

- (a) securities exchange; or
- (b) clearing and settlement agency.

(2) An application made in accordance with subsection (1) shall be accompanied with a prescribed fee.

(3) The Commission may require an applicant for a licence, as provided in this section, to furnish it with such further information as the Commission considers necessary for purposes of considering and granting the licence applied for in accordance with sections *twenty-two* and *twenty-three*, as the case may be.

(4) If the Commission fails to respond within one hundred and eighty days after receiving a complete application for a license, in accordance with this Part, the application shall be deemed to have been accepted and the licence applied for duly granted.

*Consideration and  
grant of securities  
exchange licence*

22. (1) The Commission may, on receipt of an application for a securities exchange licence, as provided in section *twenty-one*, grant a securities exchange licence to a company, if the Commission is satisfied that—

- (a) the establishment of the securities exchange is necessary in the public interest, having regard to the nature of the capital markets;
- (b) the applicant has sufficient financial resources, as the Commission may prescribe by rules, for the proper performance of its functions as a securities exchange;
- (c) the applicant has, for the proposed securities exchange, at least five members who are engaged in carrying on the business of dealing in securities independently of, and in competition with, each other;
- (d) the rules and practices of the proposed securities exchange are such as ensure that business conducted by means of its facilities shall be conducted in an orderly manner, so as to afford proper protection to investors;
- (e) the rules of the proposed securities exchange make such provisions as the Commission considers satisfactory with regard to—
  - (i) efficient, honest, fair, competitive and informed trading in securities;
  - (ii) the qualifications for membership of the securities exchange;
  - (iii) the exclusion, from membership, of persons who are not of good character and business integrity;
  - (iv) the suspension or discipline of members of the securities exchange for conduct inconsistent with just and equitable principles in the transaction of securities or for contravention or failure to comply with the rules of the exchange or the provisions of this Act;
  - (v) the conditions governing securities transactions by members of the exchange and the class or classes of securities that may be dealt in by the members; the carrying on of the business of the exchange taking into account the interests of the public; and
  - (vi) the prevention of a member of the exchange from resigning where the proposed exchange

intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or to take other disciplinary action against that member;

- (f) the applicant has satisfied the requirements set out in the Second Schedule; and
- (g) the applicant has made such provision as the Commission considers satisfactory for-
  - (i) the clearing and settlement of dealings in securities to ensure the efficient, prompt and accurate settlement of securities transactions effected on the proposed exchange, and for the recording of such transactions;
  - (ii) the effective monitoring and enforcement of compliance with its rules, this Act and regulations or rules made in accordance with this Act;
  - (iii) investigating complaints in respect of business transacted by any of its members; and
  - (iv) promotion and maintenance of high standards of integrity and fair dealings by its members.

(2) The Commission shall not grant a licence to a securities exchange, unless the Commission has approved the appointment of Directors and senior management of a securities exchange.

(3) Where a holder of a securities exchange licence appoints a director or senior management after the grant of a securities exchange licence, that appointment shall not take effect until the appointment of that director or senior management is approved by the Commission, in writing.

*Consideration and grant of clearing and settlement agency licence*

23. (1) The Commission may, on receipt of an application for a clearing and settlement agency licence, as provided in section *twenty-one*, grant a clearing and settlement agency licence to a company, if the Commission is satisfied that—

- (a) the establishment of the clearing and settlement agency is necessary in the public interest, having regard to the nature of the capital markets;
- (b) the rules of the proposed clearing and settlement agency contain satisfactory provisions designed to—
  - (i) develop and operate a prompt and accurate clearing and settlement system;
  - (ii) safeguard money and securities in its custody or under its control or for which it is responsible;
  - (iii) supervise and regulate its participants; and
  - (iv) provide that dealers, financial institutions and other clearing and settlement agencies may become participants in the clearing and settlement agency;
- (c) the application is supported by a licensed securities exchange, to which the company is to provide clearing and settlement facilities;
- (d) the clearing and settlement agency shall ensure that, as far as is reasonably practical, there are fair, transparent and efficient clearing arrangements for securities transactions;

- (e) the clearing and settlement agency shall put in place measures, including the establishment of a settlement guarantee fund, to contain or manage any risks associated with its business and operations in a prudent manner;
- (f) the clearing and settlement agency shall enforce compliance by its participants with its rules; and
- (g) the clearing and settlement agency has sufficient financial, human and system resources to—
  - (i) establish and operate a fair, transparent and efficient clearing and settlement facility;
  - (ii) meet contingencies or disasters, including events such as technical complications occurring with automated systems; and
  - (iii) provide adequate security arrangements.

(2) The Commission shall not grant a licence to a clearing and settlement agency unless the Commission has approved the appointment of the Directors and senior management of the clearing and settlement agency.

(3) Where a holder of a clearing and settlement agency licence appoints a director or senior management after the grant of a clearing and settlement agency licence, that appointment shall not take effect until the appointment of that director or senior management is approved by the Commission, in writing.

24. (1) If the Commission is satisfied that an application for the grant of a licence, made in accordance with section *twenty-one*, fails to comply with, or is contrary to, the requirements of section *twenty-two* or *twenty-three*, as the case may be, or the other requirements of this Act or any regulations made in accordance with this Act, the Commission may, after giving the applicant an opportunity to be heard, refuse to grant the licence to the applicant.

(2) Where the Commission refuses to grant a licence to an applicant, the Commission shall inform the applicant of the reasons for the refusal to grant the licence.

#### Validity of licence

25. (1) A licence granted, in accordance with section *twentytwo* or *twenty-three*, shall be subject to the terms and conditions attached to it and shall be valid until revoked, cancelled or surrendered.

(2) A licence granted, in accordance with section *twenty-two* or *twenty-three*, shall be subject to the payment of an annual prescribed fee and to compliance, by the licensed person, with the conditions of the licence and any provision of this Act or regulations or rules made in accordance with this Act.

(3) A license granted, in accordance with section *twenty-two* or *twenty-three*, shall not be transferred, assigned or encumbered in any manner.

(4) The Commission may impose such additional conditions on a licence as the Commission considers appropriate for the enforcement of the requirements of this Act and regulations or rules made in accordance with this Act.

#### Variation of licence

26. The conditions of a licence granted in accordance with section *twenty-two* or *twenty-three* may be varied by the Commission after due investigation—

- (a) on the operations of the securities exchange or clearing and settlement agency, as the case may be;
- (b) in the interest of trade in the capital markets; or
- (c) in the interest of investor protection.

*Cancellation or suspension of licence*

27. (1) The Commission may, after due investigation, and after giving a licensed person the opportunity to be heard, cancel or suspend a licence granted in accordance with section *twenty-two* or *twenty-three*—

- (a) in the interest of trade in the capital markets; or
- (b) due to contravention by the licensed person of this Act or regulations or rules made in accordance with this Act.

(2) Where the Commission cancels or suspends a licence, in accordance with this section, the Commission shall issue a notification of such cancellation or suspension in the *Gazette* and a daily newspaper of general circulation in Zambia.

(3) A cancellation or suspension of a licence, in accordance with this section, shall not affect the validity of a securities transaction made before the date of notification in the *Gazette* and daily newspaper of general circulation in Zambia.

*Appeals relating to licenses*

28. (1) A person aggrieved by a decision of the Commission—

- (a) to refuse to grant or suspend a licence in accordance with this Part;
- (b) relating to any condition imposed on, or varying the conditions of, a licence; or
- (c) cancelling a licence;

may, within thirty days after the date of the decision, appeal to the Tribunal.

(2) The decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, except that the Tribunal shall, on sufficient ground shown, stay the Commission's decision.

## PART IV SELF-REGULATORY ORGANISATIONS

*Recognition of self-regulatory organisations*

29. (1) The Commission may, on the application of a self-regulatory organisation, recognise the organisation for purposes of this Act, if the Commission is satisfied that it is in the public interest to do so.

(2) Subject to subsection (1), recognition of a self-regulatory organisation, by the Commission, shall be in writing and subject to such terms and conditions as the Commission may determine.

(3) A self-regulatory organisation shall regulate the operations and standards of practice and business conduct of its members and their representatives in accordance with its by-laws, rules, policies, procedures practices and interpretations.

(4) A self-regulatory organisation shall appoint an auditor, approved by the Commission, to audit its financial affairs.

(5) The Commission may, if it is satisfied that it is in the public interest, approve a by-law, rule, policy, procedure, practice or interpretation of a self-regulatory organisation.

(6) A self-regulatory organisation may apply for the voluntary surrender of its recognition and the Commission may accept the surrender, subject to such terms and conditions as it may impose, if the Commission is satisfied that the surrender of the recognition is not prejudicial to the public interest.

*Delegation of powers  
to self-regulatory  
organisations*

30. (1) The Commission may, on such terms and conditions as it may impose, assign to a self-regulatory organisation any of the functions or powers of the Commission relating to the regulation of members of the self-regulatory organisation.

(2) The Commission may revoke, in whole or in part, a delegation of functions or powers made in accordance with subsection (1).

(3) A person directly affected by the administration of a direction, decision, order or ruling made in accordance with a bylaw, rule, policy, procedure, practice or interpretation of a self-regulatory organisation, may apply to the Tribunal for the determination of the direction, decision, order or ruling.

*Rules for self-  
regulatory  
organisations*

31. (1) Without prejudice to the generality of the Commission's power to make rules in accordance with this Act, the Commission may, by statutory instrument, make the following rules:

- (a) the qualifications for membership of a self-regulatory organisation;
- (b) application for, grant and refusal to grant membership to a self-regulatory organisation;
- (c) disciplinary procedures for members that contravene this Act or regulations or rules made in accordance with this Act or the rules of the self-regulatory organisation;
- (d) the basis on which fees are charged to members, the level of such fees and the allocation of fees as between members; and
- (e) providing for the protection of investors and the maintenance of the public interest.

## PART V LICENSING AND REGULATION OF CAPITAL MARKET OPERATORS

*Licensing of dealers*

32. (1) A company which carries on a business, whether as principal or agent, by—

- (a) making or offering to make with any person, or inducing or attempting to induce any person to enter into, or offering to enter into, any agreement for, or with a view to, buying, selling, exchanging, underwriting or subscribing for, securities;
- (b) soliciting or accepting any order for securities; or
- (c) otherwise transacting in securities, whether electronically or otherwise;

shall apply for a dealer's licence in accordance with section *thirty-six*.

(2) A person who is not licensed as a dealer, but deals or underwrites securities, commits an offence and shall be liable, on conviction, to a fine not exceeding six hundred thousand penalty units or to imprisonment for a term not exceeding six years, or to both.



*Licensing of  
investment  
advisers*

33. (1) A person who—
- (a) engages or holds out as engaging in the provision of advice on investments in securities, including advice on subscribing for, or purchasing, selling, exchanging or holding of, securities to any person, a collective investment scheme or manager of a collective investment scheme; or
  - (b) issues analysis or reports for the purposes of facilitating the recipients of the analysis or reports to make decisions on whether specific securities may be bought, sold, exchanged or subscribed for;
- shall apply for an investment adviser's licence in accordance with section *thirty-six*.
- (2) Subsection (1) shall not apply to—
- (a) a dealer who gives advice or issues analysis or reports as part of its business;
  - (b) a dealer's representative who gives advice or issues analysis or reports as part of employment with a dealer;
  - (c) a financial institution or insurance company;
  - (d) an advocate or accountant whose advice with respect to investments is incidental to the practice of the profession; and
  - (e) a person who gives advice or issues analysis or reports—
    - (i) in an electronic or print media or any publication, which is made generally available to the public, and which does not have as its principal or only object, the provision of advice or the issue of analysis or reports, concerning securities; or
    - (ii) in electronic print media for reception by the public, whether on subscription or otherwise: provided the person does not receive commission or other consideration for giving or publishing the advice.
- (3) Subject to sub-section (2), a person who is not the holder of an investment adviser's licence and who—
- (a) carries on a business as an investment adviser; or
  - (b) holds out as carrying on a business as an investment adviser;
- commits an offence and shall be liable, on conviction, to a fine not exceeding six hundred thousand penalty units or to imprisonment for a term not exceeding six years, or to both.

*Licensing of share  
transfer agents and  
representatives*

34. (1) Any person who intends to do business as a share transfer agent and who—
- (a) has the necessary infrastructure, such as adequate office space, equipment and man-power for the prompt and accurate clearance and settlement of securities transactions;
  - (b) has capacity to ensure the safeguarding of securities and monies;
  - (c) submits, with the application proposed rules with respect to record keeping, reporting, prompt and

- accurate creation of securities holders records and the safeguarding of securities and monies;
- (d) fulfills the prescribed capital adequacy requirement;
- (e) submits, with the application, proposed rules which provide for disciplinary proceedings against its employees, directors, partners or principal officers; and
- (f) is a fit and proper person in accordance with prescribed criteria;

shall apply for a share transfer agent's licence in accordance with section *thirty-six*.

(2) A person shall apply, in accordance with section *thirty-six*, for a representative's licence.

(3) A representative's licence may be conditioned on the applicant being employed or acting only as the representative of a dealer or an investment adviser.

(4) A person who is not the holder of a representative's licence and who is employed or acts as a representative, commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a term not exceeding two years, or to both.

*Regulation of other capital market operators*

35. (1) The Commission shall register, authorise, recognise or licence any other capital markets operator as may be prescribed.

(2) The Commission shall, by statutory instrument, prescribe the processes and procedures for applying for, and the terms and conditions for, the registration, authorisation, recognition or licensing of other capital markets operators, and the application of this Act, to such capital markets operators.

*Applications for licences*

36. (1) An application for a licence, as specified in sections *thirty-two*, *thirty-three* and *thirty-four* shall be made to the Commission, in the prescribed manner and form, and shall be accompanied by a prescribed fee.

(2) The Commission may require an applicant for a licence to provide it with such further information as the Commission considers necessary for the consideration and grant of the licence, in accordance with the requirements for the licence applied for, as provided in this Part.

(3) A person who, for the purpose of obtaining a licence in accordance with this Part, whether directly or indirectly, makes any representation, in writing, orally or otherwise, which is false or misleading in a material particular, commits an offence and shall be liable, on conviction, to a fine not exceeding six hundred thousand penalty units or to imprisonment for a term not exceeding six years, or to both.

*Consideration and grant of licences*

37. (1) Subject to section *thirty-eight*, the Commission shall, within ninety days of receipt of a complete application for the licence applied for, in accordance with section *thirty-six*, grant the licence if it is satisfied that the applicant shall perform the duties of a licensed person efficiently, honestly and fairly in accordance with the requirements of the licence, as stipulated in this Part.

(2) If the Commission fails to respond to an application for a licence, within the period prescribed in subsection (1), the application shall be deemed to have been granted and the licence applied for duly issued.



(3) The Commission shall not grant a licence under this Part unless the Commission has approved the appointment of directors and senior management of the applicant, in writing.

(4) Despite subsection (3), the Commission shall approve, in writing, the appointment of a director or senior management that is made subsequent to the grant of a licence.

*Conditions for  
refusal to grant  
licences*

38. (1) Notwithstanding section *thirty-seven*, the Commission shall not grant a dealer's licence to an individual.

(2) The Commission shall not grant a representative's licence to a company.

(3) Notwithstanding section *thirty-seven*, the Commission may, after due consideration or investigation, refuse to grant an investment adviser's licence to a person on the grounds that the applicant—

- (a) has not provided the Commission with such information relating to the applicant or any person employed by or associated with the applicant, or to any circumstances likely to affect the method of conducting business, as may be prescribed in accordance with this Act;
- (b) has become incapable, mentally or physically, of performing the activities to which the licence relates;
- (c) is an undischarged bankrupt;
- (d) or any person employed by, or associated with, the applicant for the purposes of the activities to which the licence relates, has been convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of an offence under this Act or regulations or rules, made in accordance with this Act, relating to licensed persons;
- (e) is not a fit and proper person to be licensed as an investment adviser;
- (f) shall not perform the duties of a licensed person efficiently, honestly and fairly;
- (g) is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act; or
- (h) is under twenty-one years of age, as the case may be.

(4) The Commission may, after due consideration or investigation, refuse to grant a dealer's licence or investment adviser's licence to a company on the grounds that—

- (a) the applicant has not provided the Commission with such information relating to it or any person employed by or associated with it, or to any circumstance likely to affect its method of conducting business, as may be prescribed by or under this Act;
- (b) any director of the applicant has become incapable, mentally or physically, of performing the director's duties with respect to the activities to which the applicant's licence relates;
- (c) any director of the applicant is an undischarged bankrupt;
- (d) the applicant or any director, controller or secretary of the applicant or any officer concerned in the

- management of the applicant's business or any employee of the applicant has been convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty, or has been convicted of an offence under this Act or regulations or rules, made in accordance with this Act, relating to licensed persons;
- (e) the applicant is not a fit and proper person to be licensed in accordance with this Part;
  - (f) there are circumstances which are likely to lead to improper conduct of business by, or discredit the method of conducting business of, the applicant;
  - (g) the applicant shall not perform the duties of a licensed person efficiently, honestly and fairly; or
  - (h) the applicant is unable to meet such minimum financial, solvency and liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act.

(5) Where the Commission refuses to grant a licence in accordance with this section, it shall notify the applicant, in writing, of the reasons for the refusal.

*Validity, terms and conditions of licences*

39. (1) A licence, granted in accordance with section *thirty-seven*, shall remain valid unless revoked or cancelled by the Commission or surrendered by the licensee.

(2) A licence shall be granted subject to the payment of an annual prescribed fee and compliance, by the licensed person, with the conditions of the licence and any provision of this Act or regulations or rules made in accordance with this Act.

(3) A license granted in accordance with section *thirty-seven* shall not be transferred, assigned or encumbered in any manner.

(4) The Commission may impose such additional conditions on a licence as the Commission considers appropriate for the enforcement of the requirements of this Act or regulations or rules made in accordance with this Act.

*Variation of conditions of licences*

40. The conditions of a licence, granted in accordance with section *thirty-seven*, may be varied by the Commission after due investigations of the activities of the licensed person.

*Revocation of licences*

41. (1) Where a licensed person, being –
- (a) an individual, dies; or
  - (b) a company, is dissolved;

the licence shall cease to be valid and shall be deemed to have been revoked by the Commission from the date of the death of the individual or the dissolution of the company, as the case may be.

(2) The Commission may revoke the licence of licensed person, who is an individual, after due investigation and after giving the licensed person the opportunity to be heard, where appropriate, if the person—

- (a) becomes mentally or physically incapable of performing the activities to which the licence relates;
- (b) becomes bankrupt, or makes a composition or scheme of arrangement with creditors;
- (c) is convicted, whether in Zambia or elsewhere, of an offence involving fraud or dishonesty;

- (d) is convicted of an offence against this Act or regulations or rules made in accordance with this Act;
- (e) is no longer a fit and proper person, as prescribed, to hold a licence in accordance with this Part;
- (f) is unable to meet such minimum financial, solvency, capital adequacy or liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act;
- (g) ceases to carry on business in Zambia; or
- (h) is the holder of a representative's licence and the licence of the dealer or investment adviser is revoked or suspended.

(3) The Commission may revoke the licence of a licensed person, who is a company, after due investigation and after giving the company the opportunity to be heard, where appropriate, if—

- (a) the company goes into liquidation or is ordered to be wound up;
- (b) a receiver or manager for the property of the company is appointed;
- (c) the company has ceased to carry on business;
- (d) a levy of execution in respect of the company has not been satisfied;
- (e) the company has entered into a compromise or scheme of arrangement with its creditors;
- (f) the licence of a director, secretary or other person concerned in the management of the company, who is required to be licensed in accordance with this Act, has been revoked; or the company is unable to meet such minimum financial, solvency, capital adequacy and liquidity requirements or other criteria as may be prescribed by regulations or rules made in accordance with this Act.

(4) Subject to subsection (5), the Commission may revoke a licence at the request of a licensed person.

(5) The revocation of a licence, in accordance with this section shall not operate so as to—

- (a) avoid or affect any agreement, transaction or arrangement relating to a securities transactions entered into by the person whose licence has been revoked, whether the agreement, transaction, or arrangement was entered into before or after the revocation of the licence; or
- (b) affect any right, obligation or liability arising under any agreement, transaction or arrangement.

(6) A person whose licence is revoked, in accordance with this section may not apply to be licensed in accordance with this Act, in any capacity, until the expiration of at least twelve months from the date of revocation of the licence.

*Annual fee*

42. A person licensed in accordance with this Act, shall, subject to such conditions as the Commission may prescribe, pay an annual fee.

*Appeals to Tribunal*

43. (1) A person aggrieved by a decision of the Commission

- (a) to refuse to grant a licence in accordance with this Part;
- (b) relating to any condition imposed on, or varying the conditions of, a licence; or
- (c) revoking a licence;

may, within thirty days after the date of the decision, appeal to the Tribunal.

(2) The decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, except that the Tribunal shall, on sufficient grounds shown, stay the Commission's decision.

*Register of licences*

44. (1) The Commission shall establish and maintain, in such form as may be appropriate, a register of licensed persons.

(2) The Commission shall record in the register, established in accordance with subsection (1)—

- (a) the name of the licensed person;
- (b) in the case of a licensed person which is a company, the name of each director and secretary of the company and the names and shares of each shareholder;
- (c) the date on which the licence was granted;
- (d) the address of the principal place at which the business is carried on;
- (e) the addresses of the other places, if any, at which the licensed person carries on business;
- (f) if the business is carried on under a name or style other than the name of the licensed person, that name or style;
- (g) particulars of revocation of a licence;
- (h) in the case of a representative's licence, the name and address of the business of the dealer or investment adviser in relation to whom the representative is licensed; and
- (i) such other matters as may be prescribed.

(3) Any person may, on payment of the prescribed fee, inspect and make copies of, or take extracts from, the register, established in accordance with subsection (1).

*Records kept by licensed person*

45. (1) A licensed person shall maintain a record, in the prescribed form, of the securities in which that person has an interest, within seven days of the acquisition of the interest in the securities.

(2) Where there is a change in the interests in securities of a licensed person, that person shall enter in the record, maintained in accordance with subsection (1), within seven days after the date of the change, full particulars of the change, including the date and circumstances relating to the change.

(3) A licensed person shall inform the Commission, in the prescribed manner and form the place at which that person keeps the record maintained in accordance with subsection (1).

(4) A licensed person, who fails to maintain a record as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both.

*Information to be  
supplied by  
licensed person*

46. (1) A licensed person shall notify the Commission, in writing, of any change that may occur relating to—
- (a) the address, in Zambia, at which the licensed person carries on business; or
  - (b) any information submitted in the application for a licence as prescribed by regulations made in accordance with this Act.
- (2) A licensed person who ceases to carry on the business authorised by the licence shall, at least six months before that person ceases to carry on business or within such shorter period as may be approved by the Commission, notify the Commission.
- (3) Where a person becomes or ceases to be a director of a company licensed in accordance with this part, the company shall, within one month of the director becoming or ceasing to be a director, notify the Commission in writing of the change.
- (4) A licensed person shall notify the Commission of any misconduct that has resulted in legal or disciplinary proceedings being taken.
- (5) A licensed person shall furnish the Commission with any additional information as may be prescribed.
- (6) A person who fails to give any notice or supply any information, as provided for in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the contravention continues.

*Appointment of  
auditor by licensed  
person*

- 46A. (1) Despite the Accountants Act, 2008, a licensed person shall appoint an auditor who is a member of the Zambia Institute of Chartered Accountants, and the auditor shall not provide auditing services to the licensed person unless the auditor meets the minimum criteria specified by the Commission.
- (2) An auditor shall audit the annual financial statements of a licensed person in accordance with the prescribed standards specified in the Accountants Act, 2008 and as provided under this Act.
- (3) This section shall not apply to a person licensed as a representative under section 34.

*Duty of auditor to  
report licensed  
person  
Act No. 13 of 2008*

- 46B. (1) Despite the Accountants Act, 2008, an auditor shall provide a report to the Commission, on a licensed person's failure to provide audited results in a prescribed manner and form within four months of the end of a financial year, stating the reasons for the delay.
- (2) A licensed person who fails to provide audited results or an auditor who fails to report a delay by a licensed person in submitting audited results, after due investigation by the Commission, commits an offence and is liable, on conviction, to a penalty not exceeding one hundred thousand penalty units and to a further penalty of ten thousand penalty units for each day that the offence continues.
- (3) This section shall not apply to a person licensed as a representative under section 34.

*Annual reports*

47. (1) A company licensed under this Act shall file with the Commission, within ninety days of the date of the company's financial year, an annual report which shall include—
- (a) information on the corporate governance policy of the company and any other information required by the Commission;

Act No. 13 of 2003

- (b) audited financial statements or other returns as may be prescribed by the Commission; and
  - (c) audited consolidated financial statements, where the company is a holding company or a subsidiary.
- (2) The financial statements to be included in an annual report, as specified in subsection (1), shall be audited in accordance with auditing and other standards as provided in the Accountants Act.
- (3) An investment adviser who is an individual shall file annual reports with the Commission, within a time and in a manner and form prescribed by rules issued by the Commission by statutory instrument.

## PART VI CREDIT RATING AGENCIES

Establishing and  
operating a credit  
rating agency

48. (1) A person who intends to establish and operate a credit rating agency shall apply to the Commission for a licence, in the prescribed manner and form, and pay the prescribed fee.

(2) The Commission shall, in considering an application for a licence to establish and operate a credit rating agency, take into account the following:

- (a) the ownership structure, organisational structure and the corporate governance policy of the proposed credit rating agency;
- (b) the resources and expertise to be used in the performance of credit rating services;
- (c) the procedures and methodologies to be used in determining credit ratings;
- (d) any conflict of interest that may arise in relation to the issuance of credit ratings by the applicant; and
- (e) whether the applicant satisfies the requirements of the rules referred to in section *sixty-one*.

Consideration and  
grant of credit  
rating agency  
licence

49. (1) The Commission shall, within ninety days of receipt of a complete application for a credit rating agency licence, made in accordance with section *forty-eight*, grant the licence if the Commission is satisfied that the applicant has complied with the requirements of this Act.

(2) If the Commission fails to respond to an application for a licence within the period specified in subsection (1), the application shall be deemed to have been granted and the licence applied for duly issued.

(3) **The Commission shall not grant a credit rating agency licence to a credit rating agency unless the Commission has approved the appointment of directors and senior management of the credit rating agency, in writing.**

(4) **Despite subsection (3), the Commission shall approve, in writing, the appointment of a director or senior management that is made subsequent to the grant of a credit rating agency licence.**

Refusal to grant licence

50. (1) If the Commission is satisfied that an application for the grant of a licence, made in accordance with section *forty-eight*, fails to comply with, or is contrary to, the requirements of this Act or regulations or rules made in accordance with this Act, the Commission may, after giving the applicant an opportunity to be heard, refuse to grant the licence to the applicant.

(2) Where the Commission refuses to grant the licence, as



provided in subsection (1), the Commission shall, within ninety days of receipt of the application, inform the applicant of the refusal to grant the licence and the reasons for the refusal.

*Validity of licence and non-transferability, etc of license*

51. (1) A licence granted in accordance with section *forty-nine*, shall be subject to the terms and conditions attached to it, and shall be valid until revoked, cancelled or surrendered.

(2) A licence granted, in accordance with section *forty-nine*, shall be subject to the payment of an annual prescribed fee and to compliance, by the licensed person, with the conditions of the licence and any provision of this Act or regulations or rules made in accordance with this Act.

(3) A licence, granted in accordance with section *forty-nine*, shall not be transferred, assigned or encumbered in any manner.

*Variation of licence*

52. The conditions of a licence, granted in accordance with section *forty-nine*, may be varied by the Commission after due investigation—

- (a) on the operations of the credit rating agency; or
- (b) in the interest of the capital markets.

*Cancellation of licence*

53. The Commission may, in consultation with relevant regulatory authorities who use or refer to credit ratings in its regulatory functions, after giving a licensed person the opportunity to be heard, cancel a licence, granted in accordance with section *forty-nine*—

- (a) in the interest of the capital markets;
- (b) due to contravention by the licensed person of this Act or regulations or rules made in accordance with this Act;
- (c) if the licensed person contravenes the conditions specified in the licence; or
- (d) if the licensed person fails to comply with any directive issued by the Commission.

*Appeals relating to credit rating agency licence*

54. (1) A person aggrieved by a decision of the Commission—

- (a) refusing to grant a credit rating agency licence in accordance with this Part;
- (b) relating to any condition imposed on, or the variation of the conditions of, a credit rating agency licence; or
- (c) cancelling a credit rating agency licence;

may, within thirty days after receiving the decision, appeal to the Tribunal.

(2) A decision of the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, except that the Tribunal shall, on sufficient grounds shown, stay the Commission's decision.

*Duties of credit rating agency*

55. (1) A credit rating agency licensed in accordance with this Act shall—

- (a) have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control arrangements for information processing systems;
- (b) protect confidential information made available to it by issuers, including prohibiting its employees from using such information to enter into transactions; or

- (c) ensure that it has the necessary knowledge and experience to issue credit ratings and perform its credit rating services.

(2) Each officer of a credit rating agency who fails to comply with this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Code of conduct*

56. A credit rating agency shall adopt and adhere to a code of conduct approved by the Commission.

*Methodologies, models and key rate assumptions*

57. (1) A credit rating agency shall—
- (a) adopt, implement and enforce adequate measures to ensure that credit ratings are based on a thorough analysis of all the information that is available to it and relevant to its analysis according to its rating methodologies;
  - (b) use rating methodologies that are systematic, continuous and subject to validation on historical experience, including back-testing;
  - (c) regularly review its methodologies, models and key rating assumptions; and
  - (d) establish internal arrangements to monitor the impact of changes in macro-economic or capital markets conditions on credit rating.

(2) A person or an officer of the Commission shall not hinder, interfere, obstruct or improperly attempt to influence a credit rating, the content of a credit rating, or any methodology, model or key assumption used by a credit rating agency to derive a credit rating.

(3) A person who contravenes subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Disclosures*

58. A credit rating agency shall, on the request of an interested person, make available, free of charge, for inspection—

- (a) the practices, procedures, processes, methodologies, models and key rating assumptions it uses in its credit ratings and credit rating services;
- (b) its code of conduct;
- (c) the general nature of its compensation arrangements; and
- (d) its policy on publishing credit ratings and other related communication.

*Records*

59. A credit rating agency shall cause to be kept, for a period of ten years, records and audit trails of its credit rating services.

*Approval of external credit rating agencies*

60. (1) The Commission may approve a credit rating agency that is authorised, licensed or registered by a foreign regulatory authority to perform credit rating services, subject to compliance with this Act and rules and regulations made in accordance with this Act and such terms and conditions as the Commission may determine.

(2) A credit rating agency shall apply to the Commission, in the prescribed form and manner for the approval of a credit rating agency that is

authorised, licensed or registered by a foreign regulatory authority and whose credit ratings it intends to endorse.

(3) The Commission shall require a credit rating agency that is authorised, licensed or registered by a foreign regulatory authority to provide the Commission with such information as the Commission considers necessary to monitor, on an ongoing basis, compliance with this Act and rules and regulations made in accordance with this Act.

*Rules for credit  
rating agency*

61. (1) Without prejudice to the generality of the Commission's power to make rules in accordance with this Act, the Commission may, by statutory instrument, make rules relating to all credit rating agencies, including credit rating agencies authorised, licensed or registered by a foreign regulatory authority, with respect to the following:

- (a) organisational requirements for credit rating agencies;
- (b) quality and integrity of credit ratings;
- (c) presentation of credit ratings;
- (d) disclosures;
- (e) fraudulent and misleading advertising, canvassing and marketing;
- (f) the responsibilities of credit rating agencies to investors and the public; and
- (g) any matter that is required to be prescribed in terms of this Act.

(2) Without prejudice to subsection (1), the Commission may make different rules for locally established credit rating agencies and credit rating agencies authorised, licensed or registered by a foreign regulatory authority or for different aspects of the provisions specified in subsection (1).

## PART VII REGULATION OF SECURITIES EXCHANGES

*Power of  
Commission to  
give direction*

62. (1) Where the Commission is satisfied that an exchange has ceased to meet the conditions, referred to in section *twenty-two*, or that there is adequate evidence requiring the protection of investors, or for the proper regulation of trade on the securities exchange, the Commission may give directions with respect to—

- (a) trading on or through the facilities of the exchange generally or of a particular security listed on the exchange;
- (b) the manner in which the exchange carries on any aspect of its business or administration; or
- (c) any other matter that the Commission considers necessary for the effective administration of, and compliance with, this Act and regulations and rules made in accordance with this Act.

(2) A director or officer of a securities exchange who fails to comply with a direction given, in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Appeal against  
direction of  
Commission*

63. (1) A securities exchange that is dissatisfied by a direction of the Commission, given in accordance with section *sixty-two*, may, within thirty days after the direction is given, appeal to the Tribunal.

(2) The Tribunal may confirm, quash or vary the direction of the Commission.

(3) The Tribunal's decision shall be final and binding, except in cases in which an appeal to the Court is allowed.

(4) The Commission's direction shall not be stayed by reason only of the lodgement of an appeal, pending the decision of the Tribunal, and it shall be the duty of the Commission to give effect to the Tribunal's decision.

*Power of Minister to suspend business of securities*

64. (1) The Minister may, after consultation with the Commission, on the grounds specified in subsection (2), direct that a securities exchange suspends the transaction of dealings in securities for such period as may be specified in the direction.

(2) A direction, provided for in subsection (1), may only be given if the Minister is satisfied that the orderly transaction of business on the securities exchange is being or is likely to be prevented due to the following:

- (a) a natural disaster has occurred in Zambia; or
- (b) an economic or financial crisis or other like circumstance, whether in Zambia or elsewhere, has occurred.

(3) A securities exchange which allows a dealer to deal in securities while a direction is in force, as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(4) A securities exchange which allows a participant in the capital markets to participate in the securities market while a direction is in force, as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand penalty units.

(5) The Commission may take such steps as it considers necessary to ensure compliance with a direction, given in accordance with this section, and may cause the premises of the securities exchange affected by the direction to be locked and secured.

*Management of securities exchange*

65. (1) The affairs of a securities exchange shall be managed by a board whose members shall, subject to approval of the Commission, be elected or appointed in accordance with its articles of association.

(2) The board of a securities exchange shall ensure that the exchange is operated in compliance with this Act, rules and regulations made in accordance with this Act and its exchange rules and shall—

- (a) be responsible for the general oversight of the affairs of the exchange;
- (b) oversee the administrative affairs of the exchange in order to ensure sound financial management structures and processes; and
- (c) ensure compliance with continuing obligations provided for in the Second Schedule and with regulations and rules made in accordance with this Act, and with its exchange rules.

(3) The members of the board of a securities exchange shall individually and collectively be responsible for any non-compliance with the provisions of this Act and rules and regulations made in accordance with this Act and its rules.

(4) A person directly affected by the administration of a direction, decision, order or ruling made, in accordance with a bylaw, rule,

policy, procedure, practice or interpretation of a securities exchange rule, may apply to the Tribunal for a determination of the matter.

*Governance fitness standards*

66. A securities exchange shall establish and enforce appropriate fitness standards for members, directors, members of a disciplinary committee and any other person with direct access to the securities exchange.

*Exchange rules*

67. (1) Subject to the approval of the Commission, a securities exchange may make such rules as it considers necessary or desirable for the proper and efficient regulation, operation, management and control of the securities exchange.

(2) A rule of a securities exchange shall have no effect unless it has been approved, in writing, by the Commission.

*Securities exchanges to assist Commission*

68. A securities exchange shall provide such assistance to the Commission, as the Commission may reasonably require, for the performance of its functions and duties, including the furnishing of such returns and information relating to its business or in respect of transactions in securities and any other specified information as the Commission may require for the proper enforcement of this Act.

*Notification of changes and legal proceedings for misconduct*

69. (1) A securities exchange shall notify the Commission, in writing, of any change that may occur relating to—

- (a) the address, in Zambia, at which the securities exchange carries on business; or
- (b) any information submitted in the application for a securities exchange licence, as prescribed by this Act or regulations made in accordance with this Act.

(2) A securities exchange that intends to cease to carry on the business authorised by the licence shall immediately notify the Commission of such intention and shall not cease to conduct business until the securities exchange develops and implements measures approved by the Commission for the protection of investors.

(3) Where a person becomes or ceases to be a director of a securities exchange the company shall, within one month of the Director becoming or ceasing to become a director, notify the Commission in writing of the change.

(4) A securities exchange shall notify the Commission of any misconduct that has resulted in legal or disciplinary proceedings being taken.

(5) A securities exchange shall furnish the Commission with any additional information, relating to the matters provided for in this section, as may be prescribed.

(6) A securities exchange which fails to give any notice or supply any information, as provided for in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the contravention continues.

*Annual reports*

70. (1) A securities exchange shall file with the Commission, within ninety days of the date of its financial year, an annual report which shall include –

- (a) information on the corporate governance policy of the securities exchange and any other information required by the Commission;

- (b) audited financial statements or other returns as may be prescribed by the Commission; and
- (c) audited consolidated financial statements, where the securities exchange is a holding company or a subsidiary.

(2) The financial statements, to be included in an annual report, as specified in subsection (1), shall be audited, in accordance with auditing and other standards as provided in the Accountants Act.

*Act No. 13 of 2003*

*Amendment to  
exchange rules*

71. (1) A securities exchange that wishes to make an amendment to its rules, whether by way of rescission, alteration or addition, shall submit a draft of the proposed amendment to the Commission for approval.

(2) The Commission may, within forty-five days after receipt of a draft of a proposed amendment, submitted in accordance with subsection (1), by notice to the securities exchange, allow the amendment to be made to the rules or disallow the amendment, whereupon the amendment shall not be made to the rules.

(3) If the Commission fails to issue a notice, within the period prescribed in subsection (2), the proposed amendment shall be deemed to have been approved, except that any period used to clarify issues relating to the rules shall not be counted.

*Use of certain titles*

72. A person, other than a licensed securities exchange, who takes or uses, or has attached to, or exhibited at, any place—

- (a) the title “securities exchange” or “stock exchange”; or
- (b) any title which so closely resembles either of the titles specified in paragraph (a) as to be likely to deceive;

commits an offence and shall be liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

*Delegation of powers  
to securities  
exchange*

73. (1) The Commission may, on such terms and conditions as it may impose, assign to a securities exchange, in writing, any of its functions and powers, as the Commission considers appropriate for the effective operation of the exchange.

(2) The Commission may revoke, in whole or in part, an assignment of functions and powers made in accordance with subsection (1).

*Rules relating to  
securities exchanges*

74. Without prejudice to the generality of the Commission’s power to make rules, in accordance with this Act, the Commission may, by statutory instrument, make the following rules:

- (a) the conditions subject to which, and the circumstances in which, any exchange may suspend securities transactions;
- (b) the qualifications for membership of an exchange and the minimum number of persons that are required to be admitted to membership of a securities exchange;
- (c) the basis on which fees are charged to members, the level of such fees and the allocation of fees as between members;
- (d) the type of business that may be carried on and services that may be provided by or at a securities exchange;
- (e) prescribing the requirements to be met before securities are listed on a securities exchange or traded on a securities exchange;



- (f) prescribing the procedure for dealing with applications for the listing of securities;
- (g) providing for the cancellation or suspension of the listing of any specified securities, if the Commission's requirements for listing or trading on the securities exchange are not complied with;
- (h) the cancellation or suspension of the listing of any specified securities, if the Commission considers that such action is necessary to maintain an orderly securities market; and
- (i) prescribing the free float to be maintained by a listed entity on each securities exchange.

## PART VIII

### REGISTRATION OF SECURITIES, REGISTERED SECURITIES AND TRADING ON SECURITIES EXCHANGE

#### *Registration of securities*

75. (1) An issuer of securities or its representative shall file with the Commission, a statement, in the prescribed form, for the registration of the securities it proposes to issue to the public in Zambia, which shall be accompanied by the prescribed fee, and such registration shall be valid for such period as may be prescribed.

(2) Subject to subsection (3), the Commission may approve a statement for the registration of securities, filed in accordance with subsection (1), and register the securities.

(3) If the securities—

- (a) of a public company are publicly traded or, directly or indirectly, promoted or advertised or offered for sale to the public in contravention of this section; and
- (b) have not been registered, in accordance with this section, and are not guaranteed by the Government or exempted in accordance with this Act, from the requirements of this section;

the issuer commits an offence and shall be liable, on conviction, to a penalty not exceeding two hundred thousand penalty units.

(4) For the purposes of this section, securities of a public company shall be treated as being publicly traded if—

- (a) the company has more than fifty shareholders; or
- (b) the Commission, by notice in writing to the issuer, has declared that, after ninety days, those securities shall be treated as being publicly traded, and ninety days has elapsed since that notice was given.

(5) Unless a company proceeds to list the registered securities on a securities exchange, a registration made, in accordance with subsection (1), shall remain valid for such period as the Commission may, by statutory instrument, prescribe.

#### *Prospectus*

76. A prospectus prepared for the purposes of any public offer to be made in relation to securities that are registrable, in accordance with section *seventy-five* shall contain or be accompanied by—

- (a) such information as investors and their professional advisers would reasonably require and expect to find in the prospectus for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and

- losses and prospects of the issuer of the securities and the rights attaching to the securities; and
- (b) such other information, particulars, and requirements as may be prescribed by regulations made in accordance with this Act.

*Dealings in securities market not operated by securities exchange prohibited*

77. (1) A dealer who transacts in securities at or through a securities market which is not operated by a securities exchange commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(2) This section shall not apply to any dealings of a kind or description prescribed by regulations or rules made in accordance with this Act.

*Trading in listed registered securities*

78. A person who transacts in any registered securities, other than on the securities exchange on which the securities are listed, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Trading in unlisted registered securities*

79. (1) A person who **deals** in a Government security or a registered security that is not listed on any securities exchange shall report that transaction to a securities exchange.

(2) A person who transacts in a Government security or a registered security that is not listed on any securities exchange and who fails to report that transaction to a securities exchange, commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units, or imprisonment for a term not exceeding five years, or to both.

(3) The Commission may, by notice to every dealer, declare that any securities specified in the notice, being securities which, in the opinion of the Commission, are being actively traded shall be dealt with as if the securities were listed securities.

*Registered securities to be traded through licensed dealers*

80. (1) A person who deals in any registered securities shall only trade through a dealer.

(2) A person who contravenes subsection (1), commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) This section shall not apply to any dealings of a kind or description prescribed by regulations made in accordance with this Act.

*Continuing obligations for registered securities*

81. (1) **An issuer shall, once securities are registered, keep the public informed of all matters which affect the value of the securities immediately on their becoming known to the issuer, by placing an advertisement in a newspaper of general circulation in the Republic or in other media approved by the Commission, and shall submit reports to the Commission and to the securities exchange on which those securities are quoted or listed.**

(2) The Commission may require an issuer of securities registered in accordance with section *seventy-five* to submit such information as the Commission may reasonably require for the proper performance of its functions under this Act.

(3) Regulations, made in accordance with this Act, may prescribe further obligations to be met by the issuers of registered securities.

(4) An issuer that neglects or fails to comply with this section or regulations, made in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

*Dematerialisation and maintenance of securities*

82. (1) On the commencement of this Act—

- (a) any new issue of securities to be traded on a securities exchange shall be issued in a dematerialised form;
- (b) the electronic record of a clearing and settlement agency shall constitute the record of an issuer in respect of securities held in a clearing and settlement agency for that issuer and, in case of any discrepancy between the issuer's record and the record of the clearing and settlement agency, the latter shall prevail; and
- (c) a clearing and settlement agency register shall constitute the register of all securities in the securities accounts of its account holders.

(2) The Commission may, by statutory instrument, make rules for the elimination of scrips in order to give effect to the dematerialisation of securities.

(3) Every securities account, in a clearing and settlement agency, shall be in the name of the beneficiary owner of the securities that have been deposited in the securities account or in the name of a nominee and in such form as may be prescribed by the rules of the clearing and settlement agency.

(4) All securities deposited in a securities account shall be regarded as negotiable instruments.

*Fungibility*

83. Securities of the same class, issued by the same issuer, are interchangeable and shall be regarded as a collection of one class of securities.

*Codes of ethics and governance for capital market*

84. (1) The Commission may prescribe codes of ethics and corporate governance for capital markets operators.

(2) Where any contract for the sale of securities is entered into in contravention of the code of ethics or the code of corporate governance, prescribed in accordance with subsection (1), the contravention shall be actionable at the suit of any person who suffers loss as a result of the contravention.

*Contract notes*

85. (1) A dealer shall, in respect of every contract for the purchase, sale or transfer of an interest in securities in the secondary market, entered into, whether as principal or agent, not later than the end of the next trading day after the contract was entered into, make out a contract note which complies with subsection (2) and—

- (a) where the contract was entered into by the dealer as agent, deliver the contract note to the person on whose behalf it entered into the contract; or
- (b) where the contract was entered into by the dealer as principal, retain the contract note.

- (2) A contract note shall include—
- (a) the name or style under which the dealer carries on business and the address of the principal place at which it carries on the business;
  - (b) where the dealer is acting as principal, a statement that it is so acting;
  - (c) the name of the person, if any, to whom the dealer is required to give the contract note;
  - (d) the date of the contract and the date on which the contract note is made out;
  - (e) the quantity and description of the securities which are the subject of the contract;
  - (f) except in the case of a securities exchange, the price per unit of the securities;
  - (g) the amount of consideration payable under the contract or, in the case of a transfer of an interest in securities, sufficient particulars of the securities transferred;
  - (h) the rate or amount if any, payable in respect of the contract;
  - (i) the date of settlement; and
  - (j) such other information as may be prescribed by regulations made in accordance with this Act, to ensure a complete audit trail for the execution of customer instructions and settlement of securities transactions.

(3) A dealer who completes a contract for the purchase, sale or transfer of an interest in securities in the secondary market without having complied with this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

(4) A disclaimer or exclusionary clause in a contract note for purposes of ousting the provisions of this section shall have no legal effect.

*Terms of settlement of  
bargains in  
securities, etc.*

86. The Commission may, by statutory instrument, make rules for the regulation of the terms upon which bargains in securities are settled and may thereby prohibit or restrict forward transactions or option contracts.

*Short-selling*

87. (1) A person who short-sells securities at or through a securities exchange, commits an offence, unless at the time of the sale—

- (a) the person or the person's principal has a presently exercisable and unconditional right to vest the securities in the purchaser of the securities;
- (b) the person or that person's principal has deposited, in the manner prescribed, one hundred percent collateral against the short-sale, marked to market at the close of every trading day until the transaction is complete;
- (c) the person or that person's principal owns another security convertible into the securities sold or an option or right to acquire the securities sold and, within ten days after the sale, exercises the conversion privilege, option or right and delivers the security, so acquired, to the purchaser or transfers the convertible security, option or right to the purchaser of the security; or
- (d) the person has entered into a fully secured and unconditional borrowing agreement or arrangement pursuant to which that person shall be able to deliver

the securities for settlement in accordance with the rules of the relevant securities exchange.

(2) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) The Commission may, by statutory instrument, make rules regulating short-sales.

*Accounts to be kept by  
licensed persons*

88. (1) A licensed person, who is dealer or investment adviser, shall keep or cause to be kept such accounting and other records as shall sufficiently explain the securities transactions and financial position of all business relating to the licence and enable true and fair profit and loss accounts and balance sheets to be prepared and shall cause such records to be kept in a manner and form prescribed as to enable the accounts to be conveniently and properly audited.

(2) Without limiting the generality of subsection (1), each licensed person, specified in subsection (1), shall maintain such books and records for a period of ten years after the settlement or conclusion of a securities transaction and shall file such reports in the prescribed manner and form.

(3) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

*Financial  
resources rules*

89. (1) The Commission may issue rules prescribing financial resources to be maintained by a person licensed in accordance with this Act.

(2) Rules, made in accordance with subsection (1), may—

- (a) impose requirements which are absolute or which may be varied by reference to factors specified in the rules;
- (b) impose requirements which take account of any business carried on in respect to the businesses which the dealer or investment adviser is licensed for; and
- (c) make provision as to the assets, liabilities and other matters to be taken into account in determining a dealer's or investment adviser's financial resources and the extent to which, and the manner in which, they are to be taken into account.

*Investment advisory  
contracts*

90. (1) An investment adviser shall not enter into an investment advisory contract or extend, renew or perform an investment advisory contract entered into, extended or renewed after the commencement of this Act, if the contract—

- (a) provides for remuneration to be paid by the client to the investment adviser on the basis of a share of capital gains of the funds or any part of the funds of the client;
- (b) does not include a provision stating that an assignment of the contract by the investment adviser shall be made only with the consent of the client; or
- (c) does not include a provision stating that the investment adviser—
  - (i) if the investment adviser practices in partnership with one or more other

investment advisers, shall notify the client of any change in the partnership within a reasonable time after the change; or

- (ii) if a company, shall notify the client of any change in the directors of the company, within a reasonable time after the change.

(2) Notwithstanding anything to the contrary, paragraph (a) of subsection (1) shall not apply to an investment advisory contract—

- (a) which provides for remuneration based on the total value of a fund averaged over a definite period or on definite dates or taken on a definite date; or
- (b) with respect to participation in a collective investment scheme, in accordance with Part X, that provides for remuneration based on the asset value of the scheme, or company under management, averaged over a specified period and increasing and decreasing proportionately in accordance with the performance of the scheme or company over a specified period in relation to—
  - (i) the investment record of an appropriate index of securities; or
  - (ii) such other measure of investment performance, as the Commission may approve or on the application of either party to an investment advisory contract or intended contract.

(3) An investment advisory contract entered into in contravention of this section shall, notwithstanding any provision of the contract, be voidable at the option of the client.

(4) An investment adviser who knowingly enters into an investment advisory contract in contravention of this section, commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand penalty units.

## PART IX REGULATION OF CLEARING AND SETTLEMENT AGENCIES

*Power of Commission  
to give directions to  
clearing and  
settlement agency*

91. (1) Where the Commission is satisfied that it is necessary in the public interest and proper operations of the affairs of a clearing and settlement agency, the Commission may give directions with respect to—

- (a) the manner of clearing and settlement through the facilities of the clearing and settlement agency generally or of particular listed securities listed or traded on listed or trade on the securities exchange;
- (b) the manner in which the clearing and settlement agency carries on any aspect of its business or administration;
- (c) the persons or class of persons who may be participants in the clearing and settlement agency; or
- (d) any other matter that the Commission considers necessary for the effective administration of, and compliance with, this Act or regulations or rules made in accordance with this Act.

(2) A director or officer of any clearing and settlement agency who neglects or fails to comply with a direction, given to it, in accordance



with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Appeal against  
direction of  
Commission*

92. (1) A clearing and settlement agency that is dissatisfied with a direction given by the Commission, in accordance with section *ninety-one*, may, within thirty days after the direction is given, appeal to the Tribunal.

(2) The Tribunal's decision shall be final and binding on all parties, including the Commission, except where an appeal to the Court is allowed.

(3) A direction given by the Commission shall not be stayed by reason only of an appeal having been lodged with the Tribunal, but the Tribunal shall, on sufficient grounds shown, stay the Commission's decision.

*Power of Commission to  
suspend business of  
clearing and settlement  
agency*

93. (1) The Commission may, on the grounds specified in subsection (2), direct that a clearing and settlement agency suspend transactions in securities for such period as may be specified in the direction.

(2) A direction, provided for under subsection (1), may only be given if the Commission is satisfied that the orderly transaction of business in the clearing and settlement agency is being or is likely to be prevented due to the following reasons:

- (a) a natural disaster has occurred in Zambia;
- (b) an economic or financial crisis or other like circumstance, whether in Zambia or elsewhere has occurred; or
- (c) the clearing and settlement agency has ceased to meet the conditions set out in section *twenty-three*.

(3) A clearing and settlement agency which allows a participant in the capital markets to participate in the clearing and settlement agency while a direction is in force, as provided in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units.

(4) The Commission may take such steps as it considers necessary to ensure compliance with a direction, given in accordance with this section, and may cause the premises of the clearing and settlement agency affected by the direction to be locked and secured.

*Notification of changes  
and legal proceedings for  
misconduct*

94. (1) A clearing and settlement agency shall notify the Commission, in writing, of any change that may occur relating to—

- (a) the address, in Zambia, at which the clearing and settlement agency carries on business; or
- (b) any information submitted in the application for a licence, as prescribed by regulations made in accordance with this Act.

(2) A clearing and settlement agency which ceases to carry on the business of a clearing and settlement agency shall, at least six months before the agency ceases to carry on business, notify the Commission.

(3) Any person who becomes or ceases to be a director of a clearing and settlement agency shall, at least three months before the date of cessation of business, notify the Commission, in writing, of the change of address of the person.

(4) A clearing and settlement agency shall notify the Commission of any misconduct that has resulted in legal or disciplinary proceedings being taken.

(5) A clearing and settlement agency shall furnish the Commission with any additional information, related to matters provided for in this section, as may be prescribed.

(6) A person who fails to give any notice or supply any information, as provided for in this section, commits an offence and shall be liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the contravention continues

*Annual reports*

95. (1) A clearing and settlement agency shall file with the Commission, within ninety days of the date of its financial year, an annual report which shall include—

- (a) information on the corporate governance policy of the agency and any other information required by the Commission;
- (b) audited financial statements or other returns as may be prescribed by the Commission; and
- (c) audited consolidated financial statements, where the agency is a holding company or subsidiary.

(2) The financial statements to be included in an annual report, as specified in subsection (1), shall be audited in accordance with auditing and other standards as provided in the Accountants Act.

*Act No. 13 of 2003*

*Coordination of clearing and settlement agencies*

96. The Commission shall facilitate the coordination of clearing and settlement agencies with other regulated clearing and settlement facilities for the effective settlement of securities transactions.

*Asset segregation in securities account*

97. (1) A person may hold one or more securities accounts in a clearing and settlement agency and the securities accounts of each person shall be segregated from each other and from the securities accounts of the other account holders, and the interest, dividends and other benefits accruing to each securities account shall be similarly segregated.

(2) A nominee shall hold securities for only one beneficial owner or for joint beneficial owners in respect of each securities account, unless otherwise agreed between a nominee and the clearing and settlement agency.

(3) A nominee shall, in such manner and within such period as may be specified in the rules of a clearing and settlement agency, furnish to the clearing and settlement agency the name and other particulars of the beneficial owner and the balances of securities, in a named securities account, held in the name of the nominee.

(4) A nominee who contravenes subsection (2) or (3) shall be liable to such penalty as may be specified by the clearing and settlement agency under its rules.

*Exercising control of participant's account*

98. (1) A clearing and settlement agency shall establish a procedure where it or an interested person may exercise control over a participant's account in the clearing and settlement agency if—

- (a) the interested person is, in relation to securities in the participant's account, a beneficial owner, pledgee or judgment creditor of the beneficial owner; or
- (b) the securities in the participant's account is subject to a lien in favour of its issuer or to a restriction or constraint on its transfer.

(2) Subject to this Part, a clearing and settlement agency shall not transfer, deliver or otherwise deal with securities in a blocked account without instructions, in writing, from the person who exercises control over it.

*Holders of record*

99. (1) A clearing and settlement agency shall, on such dates as may be requested, in writing, produce and submit to the issuer or the issuer's duly appointed representative a list of holders of record.

(2) Subject to section *ninety-six*, a securities exchange shall not own or operate a clearing and settlement agency, except that a securities exchange may have an interest in a clearing and settlement agency but its shareholding shall not exceed the prescribed percentage of voting rights.

(3) Subject to subsection (2), this section shall not be construed as prohibiting the trading by a securities exchange, or the clearing and settlement agency of the securities exchange, of securities held in the clearing and settlement agency relating to such issuer and in the respective securities accounts held by the account holders for the purpose of issuing notices, announcements, reports, payment of interest or dividends or any other purpose.

(4) A clearing and settlement agency may, in accordance with its rules, issue to an account holder, upon request by the account holder, in the prescribed form, a statement of the account holder's securities account, specifying the amount and description of securities in the account.

(5) The Tribunal may, on application by an interested party, order the rectification of a list of holders of record or any other electronic record kept by a clearing and settlement agency if it is satisfied that—

- (a) an account holder did not consent to a transfer of deposited securities from the account holder's securities account;
- (b) a person who purports to be an account holder should not have been registered in the clearing and settlement agency's register as having title to the deposited securities, unless that person acquired the securities for consideration, in good faith and without notice of other interests in the securities and obtained registration of the transfer in the records of the issuer or the clearing and settlement agency; or
- (c) upon consideration of the application there is other cause to justify rectification.

*Use of clearing and settlement agency as registered owner of securities*

100. (1) On the issue of securities, an issuer may deliver a securities certificate, in the prescribed form, directly to a clearing and settlement agency certifying the clearing and settlement agency as the registered owner of the securities if—

- (a) the issuer has written authorisation signed by or on behalf of the beneficial owner; and
- (b) the delivery of the securities certificate is evidenced by a written confirmation signed by the clearing and settlement agency and sent at once by the issuer to the beneficial owner or the beneficial owner's agent.

(2) An issuer may, on the issue of securities, instead of delivering a securities certificate, issue the securities to a clearing and settlement agency, as registered owner, by means of a record entry if—

- (a) the issuer of the securities has written authorisation signed by or on behalf of the beneficial owner of the securities;
- (b) the issue of the securities is further evidenced by a written confirmation executed by the clearing and settlement agency and sent at once by the issuer to the

- beneficial owner of the securities or the beneficial owner's agent; and
- (c) the issue of the securities is recorded at once in the securities register of the issuer and the records of the clearing and settlement agency.

(3) The requirement to obtain a written authorisation of the beneficial owner, as specified in subsections (1) and (2), shall be satisfied if the beneficial owner acknowledges in an agreement or a document, entered into with a licensed person or clearing and licensed settlement agency, that securities owned by the beneficial owner may be kept by means of a record entry with a clearing and settlement agency, whether entered into before or after the issue of the securities, as specified in this section.

(4) A written confirmation, referred to in subsections (2) and (3), shall be, in the absence of evidence to the contrary, proof that the person named in the confirmation is the beneficial owner of the securities so described.

(5) A clearing and settlement agency shall not, in respect of securities that are not fully paid for, make an entry in its records.

*Transfer of securities  
into clearing and  
settlement agency*

101. (1) A clearing and settlement agency shall, immediately after receipt of a securities certificate from a participant, deliver the securities certificate to the issuer and request the transfer of the securities evidenced by the securities certificate to the clearing and settlement agency.

(2) Where a clearing and settlement agency presents a securities certificate to an issuer and requests a transfer to it of the securities evidenced by the securities certificate, the issuer shall, if it has a duty to register the transfer, immediately enter the transfer in its securities register and deliver to the clearing and settlement agency a securities certificate representing the securities and showing the clearing and settlement agency as the registered owner.

(3) Section *ninety-nine* shall apply, with the necessary modifications, to a transfer of securities provided for in this section.

*Transfer by record entry*

102. (1) On receipt of instructions, in writing, from a participant or, if the participant's account is blocked, from the person who exercises control over it, a clearing and settlement agency shall in accordance with the instructions, effect a transfer of securities or any interest therein from the participant to another participant by making an entry in its records.

(2) If —

(a) securities shown in the records of a clearing and settlement agency are—

(i) evidenced by a securities certificate identifying the clearing and settlement agency as the registered owner; and

(ii) the securities certificate is in the custody of the clearing and settlement agency; or

(b) the clearing and settlement agency is the registered owner of the securities by means of a record entry;

on receipt of instructions, in writing, from a participant or, if the participant's account is blocked, from the person who exercises control over it, a clearing and settlement agency shall in accordance with the instructions, effect a transfer of securities or any interest in the securities from one beneficial owner to another beneficial owner by making an appropriate entry in its records in addition to any other method permitted by law, and such transfer

shall have the effect of transferring all rights, title and interest in the securities to the beneficial owner.

*Effecting transfer of  
pledge by record entry*

103. (1) A clearing and settlement agency shall, on receipt of instructions, in writing, from a participant or if the participant's account is blocked, from the person who exercises control over it, effect a transfer, in accordance with the instructions, by way of pledge of securities from the participant to a pledgee, by making an entry in its records to block an account in the name of the participant in favour of the pledgee for the amount of the debt or other obligation or the number of securities pledged.

(2) A clearing and settlement agency shall, subject to subsection (1), on receipt of instructions, in writing, from a pledgee in whose favour an account is blocked, stating that the pledgee is entitled to realise the securities in the blocked account, and in accordance with the instructions, transfer the securities unless—

- (a) it knows that the pledgee is not entitled to realise the securities; or
- (b) its procedures specify otherwise.

(3) A clearing and settlement agency shall not be liable for any loss resulting from compliance with the instructions of a pledgee, given in accordance with subsection (2), unless the clearing and settlement agency knows, before the transfer, that the pledgee is not entitled to the securities.

*Blocking account  
by record entry*

104. A clearing and settlement agency may, on receipt of instructions, in writing, from a participant and a beneficial owner of securities, make an entry in its records, in accordance with instructions, to block an account in the name of the participant in favour of the beneficial owner or a person who acts on the beneficial owner's behalf.

*Refusal to open account*

105. (1) A clearing and settlement agency may refuse to open an account in respect of securities that are subject to a—

- (a) lien in favour of its issuer; or
- (b) restriction or constraint on its transfer, whether statutory or otherwise.

(2) A clearing and settlement agency may, with respect to securities, referred to in subsection (1), make an entry in its records to block an account in the name of a participant in favour of the clearing and settlement agency or an interested person.

*Blocking account by  
Court order*

106. (1) The Court may, on the application of a creditor who has a judgment against a beneficial owner of securities, held by a clearing and settlement agency, order the clearing and settlement agency to make an entry in its records to block an account in the name of the beneficial owner or the beneficial owner's agent in favour of the judgment creditor for the amount or number of securities mentioned in the order.

(2) A clearing and settlement agency shall transfer securities, on receipt of an order of, or instructions in writing from, the Court or an officer of the Court stating that a judgment creditor in whose favour an account is blocked, in terms of subsection (1), is entitled to realize securities in the blocked account.

(3) The Tribunal may, on the application of a person claiming to be entitled to securities held for a beneficial owner in a clearing and settlement agency, order the clearing and settlement agency to make an entry in its records to block the account in the name of the beneficial owner or the

owner's agent in favour of the claimant for the amount or number of securities mentioned in the order.

(4) A clearing and settlement agency shall not be liable for any loss resulting from compliance with an order or instructions issued and received in accordance with this section.

*Settlement of securities*

107. (1) Transactions concluded on a securities exchange shall be executed and completed when a clearing and settlement agency transfers the securities transacted, within the period approved by the Commission, from the securities account of the transferor to that of the transferee in accordance with this Part and—

- (a) where the consideration is monetary, by the Bank of Zambia simultaneously transferring funds through debiting and crediting the appropriate current accounts of participating clearing banks in same-day value funds and in accordance with an agreement between the banks and the clearing and settlement agency; or
- (b) where the consideration is not monetary, by the simultaneous transfer of the consideration in accordance with the rules of the clearing and settlement agency.

(2) For the purpose of effecting a settlement, the transfer of securities by a clearing and settlement agency and the transfer of funds by the Bank of Zambia, or the transfer of the non-monetary consideration, in terms of subsection (1), shall be final and irrevocable.

(3) Every participant of a clearing and settlement agency, other than a participating clearing bank, shall maintain a bank account with a participating clearing bank for the purpose of settling its payment obligations in accordance with the rules of the clearing and settlement agency.

(4) The transfer of ownership of, or an interest in, securities or a pledge of securities shall become effective and binding only upon the settlement of the securities transaction concerned.

*Limitation on rights of participants*

108. A capital markets participant who pledges, transfers or otherwise deals with securities held by a clearing and settlement agency, except through the facilities of the clearing and settlement agency, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Withdrawal of securities*

109. (1) A clearing and settlement agency shall, within a reasonable time, on the receipt of a demand, in writing, from a participant for whom securities are held, other than in securities held in a blocked account, for withdrawal of the securities, subject to any proceedings specified in this Part, obtain and deliver to the participant a securities certificate in the clearing and settlement agency's name or a name designated by the clearing and settlement agency evidencing the securities.

(2) The issuer of securities shall, on receipt of instructions, in writing, from a clearing and settlement agency that is the registered owner of securities, immediately deliver the securities certificate to the clearing and settlement agency in accordance with its instructions.

*Closure of securities register*

110. (1) Where a clearing and settlement agency is the registered owner of a class of securities of an issuer that proposes to close its securities register or fix a record date with respect of the class for the purpose of determining the security holders entitled to—



- (a) receive notice of, or to vote at, a meeting of security holders;
- (b) receive payment of a dividend or interest;
- (c) to participate in a liquidation distribution;

the issuer shall give the clearing and settlement agency such notice of its intention to close its securities register or fix a record date.

(2) A notice, referred to in subsection (1), shall request, from the clearing and settlement agency, a list of the names of the participants and beneficial owners for whom the clearing and settlement agency and the participants hold securities of the class, mentioned in that subsection, made up as of the date on which it proposes to close its register or fix a record date.

(3) A clearing and settlement agency shall, on receipt of a demand, in writing, from an issuer for a list of the names of participants and beneficial owners for whom it and the participants hold securities of a class issued by the issuer, provide the issuer, within ten days of the demand, with a list setting out the names and addresses of, and the number or amount of securities of the class held for, each participant and beneficial owner made up as of the date specified in the demand.

(4) A clearing and settlement agency shall, on receipt of a demand from an issuer, in terms of subsection (3), send a notice of the demand to each participant.

(5) A participant that receives a notice, sent in terms of subsection (4), shall, within five days of receipt of a notice—

- (a) furnish to the clearing and settlement agency a list containing the name and address of the beneficial owners for whom the participant holds the securities and the number or amount of securities of the class so held; and
- (b) instruct the clearing and settlement agency to furnish the list to the issuer.

(6) Where a participant who receives a notice, sent in accordance with subsection (4), does not provide a clearing and settlement agency or the issuer with a list of the beneficial owners for whom it holds securities, the participant shall, at its own expense, obtain from the issuer and send to each beneficial owner, who is not included in the list and who has not instructed it otherwise in writing, any dividend, interest or any document that the issuer wishes to send to its security holders.

(7) A clearing and settlement agency that receives lists of participants and beneficial owners, in accordance with subsection (5), shall, before it furnishes the lists to the issuer, consolidate the lists into one list in a form that does not disclose any connection between a beneficial owner and a participant, and the clearing and settlement agency may charge the participants a reasonable fee for the consolidation.

(8) A clearing and settlement agency shall treat as confidential any information it receives in accordance with subsection (5).

(9) A clearing and settlement agency shall, after receipt of a demand, in writing, from an issuer that has received a list of participants and beneficial owners, in terms of subsection (3), provide the issuer, within three days of the demand, with a current list, made up as of a date subsequent to the demand, showing any change in respect of the securities held for a participant since the date the list was made up.

(10) An issuer is entitled to obtain, free of charge, from a clearing and settlement agency, in any one calendar year, four lists of participants and beneficial owners, in terms of subsection (3), with respect to each class of

securities held by the clearing and settlement agency and the issuer shall pay the clearing and settlement agency a reasonable amount for—

- (a) any additional costs attributable to a demand for a list made after the date when the issuer closed its securities register or fixed a record date; or
- (b) any additional list.

(11) An issuer is entitled to presume that a person named in a list, obtained in accordance with this section, is the beneficial owner of the securities of the issuer referred to in the list.

*Access to clearing and settlement agency records*

111. A beneficial owner of a security of an issuer and the beneficial owner's agent may, after submitting a request, in writing, to a clearing and settlement agency, during usual business hours, examine a list delivered to an issuer that relates to any securities of the issuer held by it and may make extracts from the list, without charge and any other person may do so upon payment of a reasonable fee.

*Incorrect entry by clearing and settlement agency*

112. (1) Subject to subsection (3), an incorrect entry made in the records of a clearing and settlement agency, in connection with a transfer or pledge of securities has the same effect as a correct entry.

(2) Subject to subsection (3), a clearing and settlement agency is liable to compensate a person who incurs a loss as a result of an incorrect entry made in its records.

(3) Where a clearing and settlement agency, makes an incorrect entry in its records, transferring a particular class of security to a participant's account, the clearing and settlement agency may, to the extent that there are securities of that class in the account, correct the entry, in whole or in part, without the participant's consent.

*No liability in extraordinary circumstances*

113. (1) Where a clearing and settlement agency is unable to effect a pledge or transfer of securities on its records because of an extraordinary event, the clearing and settlement agency shall not be liable to compensate a person who incurs a loss as a result of a delay in effecting the pledge or transfer to the extent that it proves that it took reasonable corrective action.

(2) For the purposes of this section, "extraordinary event" means a gain or loss which is infrequent and unusual in nature due to a non-recurring event that is out of the clearing and settlement agency's control.

*Insolvency of participant*

114. (1) Subject to section *eighty-six*, a participant, who is insolvent, shall cease to be a member of the clearing and settlement agency and, except in so far as the rules of the clearing and settlement agency provide for the purpose of winding up the affairs of the participant and the protection of the interests of the participant's clients and of the securities market, such participant shall not, while insolvent, conduct any business relating to the clearing and settlement agency.

(2) A person who, having ceased to be a participant, in accordance with subsection (1), conducts any business relating to a clearing and settlement agency commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand penalty units.

*Insolvency of clearing and settlement agency*

115. (1) Where a clearing and settlement agency becomes insolvent, the liquidator, receiver and manager of the clearing and settlement agency shall not have any right or privilege of access to, or control or management of, any of the securities deposited in that clearing and settlement

agency.

(2) The securities deposited in a clearing and settlement agency, which becomes insolvent, shall be managed by a person appointed by the Commission and in such manner as the Commission may direct for the purpose of winding up the affairs of the clearing and settlement agency and protecting the assets of the account holders, interests of the securities market and the public.

(3) A clearing and settlement agency shall not, while insolvent, carry on or purport to carry on the business of a clearing and settlement agency, except in so far as the rules made by the Commission provide for the winding up of the affairs of a clearing and settlement agency and the protection of the interests of its participants and the securities market.

(4) The chief executive officer or any officer or employee of a clearing and settlement agency who, while the clearing and settlement agency is insolvent and contrary to subsection (3), carries on or permits to be carried on the business of the clearing and settlement agency, commits an offence and is liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*Utilisation of collateral  
upon insolvency*

116. Notwithstanding any law relating to insolvency, any asset of a participant, who is insolvent, pledged to a clearing and settlement agency as security for the settlement obligations of the participant or its client, in accordance with this Act, prior to the insolvency of the participant, may upon and after the commencement of the insolvency be utilised by the clearing and settlement agency to the extent required for the discharge of those obligations.

*Winding up order*

117. Where a participant is insolvent, the winding up order of the affairs of the participant shall not affect any settlement that becomes final and irrevocable, in accordance with this Act, prior to service of such order on the clearing and settlement agency.

*Netting agreements  
and procedures*

118. Where a participant is wound up or placed under receivership, the provisions of a written agreement to which the participant is a party and netting rules or procedures applicable to such participant, shall be binding upon the liquidator, receiver or manager in respect of any settlement obligation which—

- (a) has been incurred prior to the commencement of insolvency proceedings or prior to the issue of a winding up or receivership order;
- (b) is to be discharged on or after the date of the winding up or receivership order; or
- (c) was overdue on the date of the winding up or receivership order.

*Rectification of  
record by Tribunal*

119. (1) Where an entry is alleged to have been incorrectly made or retained in, or omitted or deleted from, the records of a clearing and settlement agency, other than in the circumstance specified in this Part, the clearing and settlement agency or an interested person may apply to the Tribunal for an order that the records be rectified.

(2) The Tribunal may, on an application made in accordance with subsection (1), make an order—

- (a) determining who is an interested person and the notice to be given to such a person;
- (b) dispensing with notice to any person;

- (c) determining the right of a party to the proceedings to have that party's name entered or retained in, or deleted or omitted from, the records of a clearing and settlement agency;
- (d) directing that the records of a clearing and settlement agency be rectified;
- (e) directing that a clearing and settlement agency make an entry in its records to block an account; or
- (f) compensating any person.

*Order of Tribunal*

120. (1) An order of the Tribunal, made in accordance with section *one hundred and nineteen*, shall be final and binding on all parties, including the Commission, except where an appeal to the Court is allowed.

(2) An order made by the Tribunal shall not be stayed by reason only of an appeal having been lodged with the Court, but the Court shall, on sufficient grounds shown, stay the order made by the Tribunal.

## PART X COLLECTIVE INVESTMENT SCHEMES AND **PRIVATE FUNDS**

*Authorisation and  
regulation of  
schemes*

121. (1) The Commission may authorise the establishment of collective investment schemes.

(2) An application for authorisation to establish a collective investment scheme shall be made, to the Commission, by a dealer or investment advisor, in the prescribed manner and form, and shall be accompanied by a prescribed fee.

(3) Subject to subsection (1), the Commission may authorise the application, within ninety days of receipt of a complete application for authorisation applied for, if after considering the application it is satisfied that—

- (a) the manager of a collective investment scheme has the relevant competencies in relation to a scheme, and the manager, directors, external auditors, trustee or custodian as the case may be, are suitable to act as manager, trustee or custodian in respect of the scheme;
- (b) the manager, trustee or custodian of the scheme is a body corporate registered by the Commission;
- (c) the collective investment scheme is such that the effective control of its affairs is vested in a manager and exercised independently of the trustee or custodian of the scheme; and
- (d) trust deed or custodial arrangement is in compliance with the Act and the regulations and rules made in accordance with the Act.

(4) An authorisation, granted in accordance with subsection (1), may be subject to such terms and conditions as the Commission considers necessary or desirable for the protection of investors.

(5) A person who enters or offers to enter into any agreement for, or with a view to, acquiring, disposing of, or subscribing for, shares, units or other securities representing an interest in a collective investment scheme that is not authorised in accordance with this Part, or establishes and operates a **private fund** that is not authorised in accordance with this Part, commits an offence and shall be liable, on conviction, to a fine not

exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

*Restrictions on promotions*

122. (1) A person who –
- (a) issues or causes to be issued an advertisement or invitation to persons to become or offer to become participants in a collective investment scheme, that is not authorised in accordance with this Part, or containing information calculated to lead directly or indirectly to persons' becoming or offering to become participants in such a scheme; or
  - (b) advises or procures a person to become or offer to become a participant in such a scheme;

commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(2) The Commission may issue a public warning and restrict unauthorised promotions.

*Authorisation of managers, trustees and custodian*

123. (1) A person shall not carry on business, or purport to do so, as manager, trustee or custodian of a collective investment scheme, unless that person that is authorised by the Commission to operate in accordance with an authorisation granted in accordance with this section and regulations made in accordance with this Act.

(2) Subject to this Act, the Commission may, on an application made in accordance with regulations made by the Commission, by statutory instrument, grant or refuse to grant, in accordance with prescribed criteria and conditions, an authorisation to carry on business as a manager, trustee or custodian of a collective investment scheme.

(3) The Commission shall refuse to grant an authorisation to operate as a manager, trustee or custodian of a collective investment scheme, as prescribed, unless it is satisfied that the applicant is a fit and proper person to be so authorised.

(4) An individual who, or a company which, is not authorised to operate as a manager, trustee or custodian of an collective investment scheme and—

- (a) carries on business as a manager, trustee or custodian of a collective investment scheme; or
- (b) holds out as carrying on business as a manager, trustee or custodian of a collective investment scheme;

commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or, in the case of an individual, to imprisonment for a term not exceeding five years, or to both.

*Trustee or custodian to hold property*

124. The property of a collective investment scheme shall be held by a trustee or custodian on behalf of participants.

*Authorisation of foreign schemes*

125. (1) The Commission may, on an application, made in accordance with regulations made by the Commission, by statutory instrument, and after being provided with such information as the Commission may require, make an order declaring a foreign collective investment scheme to be an authorised scheme for the purposes of this Act, if

- (a) the scheme is managed in a country outside Zambia;
- (b) the scheme affords adequate protection to participants;

- (c) the scheme makes adequate provision for the matters dealt with by regulations prescribed for purposes of this Part;
- (d) the manager of the scheme has an agent in Zambia who is authorised, in accordance with this Part, and has the power to act generally for the manager and accept service of notice and other documents on the manager's behalf; and
- (e) the participants are entitled to have their interests redeemed, in accordance with the terms of the collective investment scheme, at a price related to the net value of the property to which the interests relate and determined in accordance with the scheme.

(2) An order declaring a foreign collective investment scheme to be an authorised collective investment scheme, for the purposes of this Act, may include such conditions as the Commission considers appropriate.

*Revocation of  
authorisation*

126. The Commission may revoke the authorisation of a collective investment scheme, if it appears to the Commission that—

- (a) the manager, trustee or custodian of the collective investment scheme has contravened a requirement of this Act and regulations and rules made in accordance with this Act;
- (b) the manager, trustee or custodian of the collective investment scheme has, in purported compliance with any requirement of this Act, knowingly or recklessly given the Commission information which is false or misleading in a material particular;
- (c) one or more of the requirements for granting the authorisation are no longer satisfied; or
- (d) it is undesirable in the interests of participants of the collective investment scheme, or potential participants of the scheme, or is otherwise not in the public interest, that the collective investment scheme should continue to be so authorised.

*Directions by Commission  
on revocation of  
authorisation*

127. The Commission may, in revoking an authorisation of a collective investment scheme, as provided in section *one hundred and twenty-six*, give directions—

- (a) requiring the manager of the collective investment scheme to cease the issue or redemption, or both, of interests under the collective investment scheme, on a date specified in the direction, until such further date as is specified in the direction; or
- (b) requiring the manager, trustee and custodian of the collective investment scheme to wind it up, by such date as is specified in the direction or, if no date is specified, as soon as is practicable;
- (c) requiring the manager, trustee or custodian of the collective investment scheme to take any other action that shall ensure investor protection.

*Rules for collective  
investment schemes*

128. (1) The Commission shall issue rules, by statutory instrument, for or with regard to—

- (a) the application process, establishment and operation of collective investment schemes;



- (b) the constitution, management and operation of collective investment schemes;
- (c) the appointment, removal, powers, duties, rights and liabilities of the manager, trustee and custodian of collective investment schemes;
- (d) the administration of collective investment schemes and the issue of directions to managers, trustees and custodians with regard to their duties and manner of operating and administering collective investment schemes;
- (e) the rights and duties of the participants in any collective investment scheme;
- (f) the procedures and conditions for the renewal, and revocation of an authorisation granted under this Part;
- (g) the conduct of business of a collective investment scheme and persons involved in the operation of a collective investment scheme;
- (h) the manner in which the property of a collective investment scheme is held;
- (i) the closure and winding up of a collective investment scheme, including an unauthorised collective investment scheme;
- (j) the appointment, removal, powers and duties of an auditor for a collective investment scheme;
- (k) the promotion, marketing and distribution of shares, securities or units representing the interest of participants in a collective investment scheme;
- (l) the expenses relating to a collective investment scheme and the means of meeting them;
- (m) the issue and redemption of participants' interests;
- (n) the valuation and pricing of participants' interests;
- (o) the provision of management, custodian services or trusteeships, or any other services for or in connection with a collective investment scheme;
- (p) restricting or regulating the investment and borrowing powers exercisable in relation to a collective investment scheme;
- (q) requiring the keeping of records with respect to transactions and financial position of a collective investment scheme and for the inspection of such records;
- (r) requiring the preparation of periodical reports with respect to a collective investment scheme and the submission of such reports to the participants and the Commission;
- (s) any fee, remuneration or reward payable or receivable for any services rendered to a collective investment scheme;
- (t) changes to be made to a collective investment scheme;
- (u) the exemption from any of the requirements of this Part or of regulations or rules made in accordance with this Act, where the Commission considers it appropriate in the circumstances of a particular case;
- (v) the provision by any body corporate, trustee, custodian and operator to service or provide other services, for or

in connection with a collective investment scheme;

- and  
(w) the formulation of a key facts statement relating to each collective investment scheme summarising the key features of the scheme.

(2) Without limiting the generality of subsection (1), rules issued, in accordance with that subsection, may vary according to the scheme being operated by a collective investment scheme, an open-ended investment company or any other kind of investment company.

*Authorisation of  
private fund*

129. (1) The Commission may authorise the establishment of a private fund.

(2) An authorisation, granted in accordance with subsection (1), may be subject to such terms and conditions as the Commission considers necessary or desirable for protection of investors.

(3) Subject to this Act, the Commission may, on an application made in accordance with regulations made by the Minister, by statutory instrument, grant or refuse to grant, in accordance with prescribed criteria and conditions, authorisation to operate a private fund.

(4) The Commission shall refuse to authorise the establishment of a private fund as prescribed, unless it is satisfied that the applicant is a fit and proper person to be so authorised as prescribed.

(5) A person who is not authorised to establish and operate a private fund in accordance with this Part, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

(6) A person aggrieved by a decision of the Commission refusing the establishment of a private fund may, within thirty days after the date of the decision, appeal to the Tribunal.

*Rules for private  
fund*

130. The Commission shall issue rules, by statutory instrument, for or with regard to –

- (a) the application process, establishment and operation of private funds;
- (b) the management and operation of private funds;
- (c) investment conditions and restrictions in private funds;
- (d) general obligations and responsibilities of private funds;
- (e) maintenance of books and accounts by private funds; and
- (f) winding up of private funds.

*Non-application of  
the Part*

130A. This Part shall not apply to a pension fund established under any written law.

## PART XI MERGERS AND TAKE-OVERS

*Scope of Part*

131. (1) Notwithstanding any other written law, every merger or take-over of listed companies or companies whose securities are registered with the Commission shall be subject to this Part.

(2) An approval of a merger or take-over by the Commission in accordance with this Part shall not relieve a listed company from complying with any other applicable law.

(3) Nothing in this section shall apply to holding companies acquiring shares solely for the purpose of investment.

*Take-overs*

132. (1) A person shall not make or pursue an offer in respect of a take-over or substantial acquisition of the securities of any listed company or company whose securities are registered with the Commission except in accordance with this Act and the conditions and procedures prescribed by regulations made in accordance with this Act.

(2) For the purposes of this section, “substantial acquisition” means an acquisition of at least fifteen per cent of the issued securities of the company concerned.

*Creation of mergers*

133. For the purposes of this Act, a merger may be created through the acquisition of control or direction over the voting rights of a company other than by way of a revocable proxy given for no consideration for the purpose of one meeting of shareholders only.

*Consideration of applications for proposed mergers*

134. (1) The Commission shall consider transactions relating to the merger of a listed company or company whose securities are registered with the Commission, in accordance with subsection (2) and (4).

(2) A listed company or company whose securities are registered with the Commission, that proposes a takeover or merger, or is being taken over by another company, shall apply to the Commission to approve the takeover or merger, in the prescribed manner and form, and accompanied by a prescribed fee.

(3) The Commission shall consider and make a determination on a proposed merger within sixty days of receipt of an application made in accordance with subsection (2) and may extend the period in which to consider and determine a proposed merger by a further period, not exceeding thirty working days.

(4) The Commission shall, in considering an application for a proposed takeover or merger, made in accordance with subsection (2) determine whether or not shareholders in a takeover or merger transaction have been afforded fair treatment by requiring—

- (a) fair, equitable and similar treatment of shareholders;
- (b) the disclosure of timely and adequate information to enable shareholders to make an informed decision as to the merits of an offer; and
- (c) that there is a fair and informed market in the shares of companies affected by takeover and merger transactions.

(5) The Commission may request the parties to the takeover or merger to furnish the Commission with such additional information as the Commission may require in order to make an informed decision on the transaction.

(6) The Commission shall, after making a determination on a proposed merger, notify the parties of its decision to approve or reject an application for a takeover or merger, which may be subject to conditions, in the prescribed manner and form.

(7) Where the Commission rejects an application made under subsection (2), the Commission shall advise the parties not to proceed with the proposed takeover or merger for stated reasons and shall inform the

parties of their right of appeal to the Tribunal if they are not satisfied with the Commission's determination.

*Power to investigate  
mergers or take-overs*

135. (1) The Commission may investigate or appoint an authorised person to investigate any merger or take-over and may designate one or more persons to assist the authorised person.

(2) The Commission may require any party to a proposed merger or take-over to provide additional information in respect of the merger or takeover.

(3) A person may voluntarily file any document, affidavit, statement or other relevant information in respect of a merger or take-over.

*Rules on mergers  
and take-overs*

136. The Commission may, by statutory instrument make rules to provide for the manner in which take-overs and mergers concerning listed companies or companies whose securities are registered by the Commission shall be effected.

## PART XII INSIDER TRADING

*Reports by insiders*

137. (1) An insider of a reporting issuer, other than a collective investment scheme, shall, in accordance with rules made by the Commission—

(a) file periodic reports disclosing the insiders direct or indirect beneficial ownership of, or control over, securities of the issuer and the insider's interest in, or right or obligation associated with, a securities transaction; and

(b) make any other disclosures as may be prescribed.

(2) An insider shall, on request by the Commission, provide the Commission with information in the manner and form and within the time specified by the Commission.

*Prohibition of insider  
dealing*

138. Subject to the other provisions of this Part insider dealing is prohibited.

*Prohibition on disclosing  
price-sensitive  
information*

139. (1) An insider shall not, directly or indirectly, counsel, procure or otherwise advise any person to buy, sell, or otherwise transact in registered securities, if the person has price-sensitive information until such information is publicly disclosed.

(2) A person shall not deal, counsel or procure another person to deal in securities of a company of which that person has any knowledge that—

(a) is not publicly available; and

(b) would, if it were publicly available, materially affect the price of the securities.

(3) This section shall not apply to a person who transacts in registered securities who has knowledge or possession of price-sensitive information that has not been generally disclosed, where the person proves that—

(a) a director, senior officer, partner, employee or agent of the person that made or participated in making the decision on the securities transaction had no actual knowledge of the price-sensitive information; and

- (b) investment advice was not given relating to the securities transaction to a director, officer, partner or employee of the person who made or participated in making the decision on the securities transaction and who had actual knowledge of the price-sensitive information.

(4) This section shall not apply where the person proves that the other party to the purchase, sale or trade of securities had knowledge or possession of the price-sensitive information.

(5) Subsection (4) shall not apply to a director or officer of a reporting issuer in connection with a distribution of securities of the reporting issuer to such director or officer unless the trade is made pursuant to a pre-existing option or other right of the director or officer to subscribe for securities of the reporting issuer.

*Offence of insider trading*

140. (1) A person who contravenes section *one hundred and thirty-eight* or *one hundred and thirty-nine* commits an offence and shall be liable, on conviction, to a fine as specified in section *one hundred and forty-one* or to imprisonment for a period not exceeding five years, or to both.

*Disgorgement*

141. (1) Where the Tribunal finds, on application by the Commission, that a person has engaged in insider dealing, the Tribunal may make an order requiring that person to pay to the Commission, an amount determined by the Tribunal.

(2) The maximum amount that may be ordered to be paid in terms of subsection (1) shall be an amount equal to the amount determined by the Tribunal to be the amount of three times the profit that may have been realised or loss avoided by the offender due to the offence, or in the case of a company, ten percent of the annual turnover of the company, whichever is more.

(3) The Tribunal shall, in making an order in terms of this section have due regard to any administrative penalty already imposed in accordance with this Act.

(4) An amount recovered in terms of this section shall be a debt due to the Commission, and shall be used by the Commission for investor protection and market development activities.

*Transaction not void or voidable*

142. A transaction shall not be void or voidable, by reason only that it was entered into by a person who had knowledge or possession of price-sensitive information.

*Exceptions to insider dealing*

143. (1) Subject to this Part, a person shall not be prohibited, by reason of the person having knowledge or possession of price-sensitive information, from—

- (a) entering into a securities transaction, in good faith, whilst exercising that person's functions as a liquidator, receiver, receiver-manager or trustee in bankruptcy; or
- (b) acquiring securities through any employee profit sharing plan or employee stock ownership plan established to provide for the ownership of securities by employees, except that—
  - (i) the participation of the person in the plan is established prior to the time that the person acquired knowledge or possession of the price sensitive information; and

- (ii) the plan provides for the automatic acquisition of securities by participants in the plan.

(2) A person shall not be considered to have engaged in insider dealing if the person facilitates the completion or carrying out of a transaction that was agreed to before the person acquired the knowledge or possession of the price-sensitive information and the transaction was completed on the same terms.

*Defence of not soliciting information unavailable*

144. Where a person has committed an offence as specified in this Part, it shall not be a defence to the charge that the price-sensitive information came to the person's knowledge or possession without having been solicited by that person or that the person made no effort to procure the acquisition of such information.

*Presumptions*

145. (1) For purposes of this Part, price-sensitive information shall be considered to be disclosed following the public dissemination of the price-sensitive information.

(2) In this Part, a person who trades in securities at a time when that person has knowledge or possession of price-sensitive information is presumed to have traded in the securities as a result of the person's knowledge or possession of the price-sensitive information, unless proved to the contrary.

(3) In this Part, a company or unincorporated body is considered to have knowledge or possession of price-sensitive information at and from the time such price-sensitive information comes into the knowledge or possession of any director, senior officer, partner or employee of such person.

### **PART XIII**

#### **AUDITING AND CORPORATE RESPONSIBILITIES OF LISTED COMPANIES**

*Filing of annual and periodic reports with Commission  
Cap. 388*

146. (1) Notwithstanding the Companies Act, a listed company or company whose securities are registered with the Commission shall file with the Commission, on a periodic or annual basis, as may be prescribed by the Commission, its accounting records, financial statements and such other returns.

(2) The chief executive officer and the chief financial officer or any other officers or persons performing similar functions in a listed company or company whose securities are registered with the Commission shall certify in each annual or periodic report filed, in accordance with subsection (1), that—

- (a) the signing officer has reviewed the report;
- (b) based on the knowledge of the officer, the report does not contain—
  - (i) any untrue statement of a material fact, or
  - (ii) omit to state a material fact, which would make the statement, misleading in the light of the circumstance under which such statement was made;
- (c) based on the knowledge of such officer, the financial statements and other financial information included in the report fairly present, in all material respects, the financial condition and results of operations of the listed company or company whose securities are registered



- with the Commission as of, and for the periods presented in the report;
- (d) the signing officers—
    - (i) are responsible for establishing and maintaining internal controls;
    - (ii) have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities particularly during the period in which the periodic reports are being prepared;
    - (iii) have evaluated the effectiveness of the listed company's, or company's whose securities are registered with the Commission, internal controls, within ninety days prior to the report; and
    - (iv) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
  - (e) the signing officers have disclosed to the audit committee and to the auditors of the listed company or company whose securities are registered with the Commission—
    - (i) all significant deficiencies in the design or operation of internal controls which would adversely affect the company's ability to record, process, summarise and report financial data and have identified for the listed company's auditors any material weakness in internal controls; and
    - (ii) any fraud, whether or not material, that involves management or other employees who have significant role in the listed company's or company's, whose securities are registered with the Commission, internal controls; and
  - (f) the signing officers have identified, in the report, whether or not there were significant changes in internal controls or other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

*System of internal control of companies*  
Cap. 388

147. (1) Notwithstanding the Companies Act, a listed company or company whose securities are registered with the Commission shall establish a system of internal controls over its financial reporting and security of its assets and the board of directors shall ensure the integrity of the listed company's systems.

(2) The board of directors of a listed company or company whose securities are registered with the Commission, shall report on the effectiveness of the company's internal control system in its annual report.

(3) In this section, "internal control" means policies, procedures and practices put in place by the management or the board of a listed company or company whose securities are registered with the Commission to ensure safety of assets, accuracy of financial records and reports, achievement of corporate objectives and compliance with laws and regulations.

*Commission to approve  
auditors of companies  
Act No. 13 of 2008*

148. (1) Notwithstanding the Accountants Act, a listed company or company whose securities are registered with the Commission shall appoint an auditor who is a member in good standing of the Zambia Institute of Chartered Accountants, and such auditor shall not provide auditing services to the company unless the auditor meets the minimum criteria specified by the Commission.

(2) An auditor shall audit the annual financial statements of a listed company or company whose securities are registered with the Commission, in accordance with the prescribed standards specified in the Accountants Act, and as provided in this Part.

(3) Despite the Accountant's Act, 2008, an auditor shall, in writing, provide a report to the Commission, on the failure by a listed company or a company whose securities are registered with the Commission to produce audited results within four months of the end of a financial year, stating the reasons for the delay.

(4) A listed company or a company whose securities are registered with the Commission who fails to provide audited results, or an auditor who fails to report a delay in submitting audited results, after due investigation by the Commission, commits an offence and is liable to the penalty provided in section 159.

*Duty of auditor to report  
on internal controls of  
listed companies*

149. An auditor of a listed company or company whose securities are registered with the Commission shall, in the audit report of the company, issue a statement as to the existence, adequacy and effectiveness or otherwise of the internal control system of the company.

*Disclosure of quarterly  
earnings forecasts by listed  
companies*

150. A listed company or company whose securities are registered with the Commission shall disclose to the relevant securities exchange its quarterly earnings forecast in the manner and form prescribed by the Commission in rules issued by statutory instrument.

*Duty of directors to  
disclose interests in  
securities of listed  
company*

151. (1) Where, on the commencement of this Act, a director of a listed company or company whose securities are registered with the Commission has an interest in the securities of the listed company, or any other company being the listed company's subsidiary or holding company, or a subsidiary of the holding company of the listed company or company whose securities are registered with the Commission, the director shall give notice, in writing, to the company—

- (a) of the subsistence of the director's interests at that time; and
- (b) of the number of shares of each class in, and the amount of debentures of each class of, the listed company or other such company in which the director's interest subsists.

(2) Subject to subsection (3), a director of a listed company or company whose securities are registered with the Commission shall have interest in a transaction to which the company is a party where the director—

- (a) is a party to, or shall or may derive a material financial benefit from, the securities transaction;
- (b) has a material financial interest in or with another party to the securities transaction;
- (c) is a director, officer or assignee of another party to, or person who shall or may derive a material financial

benefit from, the securities transaction, not being a party or person that is—

- (i) the company's holding company, being a holding company of which the company is a wholly owned subsidiary;
- (ii) a wholly-owned subsidiary of the company; or
- (iii) a wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary; or
- (d) is otherwise, directly or indirectly, materially interested in the transaction.

(3) A director of a listed company or company whose securities are registered with the Commission shall not be considered to be interested in a securities transaction to which the listed company is a party, if the transaction comprises only the giving, by the company, of security to a third party and at the request of that third party, which has no connection with the director and in respect of a debt or obligation of the company for which the director or another person has listed personally or assumed responsibility, in the whole or in part, under a guarantee or indemnity or by deposit of a security.

(4) A director of a listed company or company whose securities are registered with the Commission shall give notice, in writing, to the company of any of the following events:

- (a) an event in consequence of whose occurrence the director has or ceases to have, an interest in securities of the company, or any other listed company being the listed company's subsidiary or holding company, or a subsidiary of the listed company's holding company;
- (b) the entering into by the director of a contract to sell securities;
- (c) the assignment by the director of a right granted to the director by the listed company to subscribe for securities of the listed company;
- (d) the grant to the director by another company, being the listed company's subsidiary or holding company or a subsidiary of the company's holding company, of a right to subscribe for securities of that other company, the exercise of such a right granted to the director and the assignment by the director of such a right so granted; and
- (e) the notification to the listed company shall state the number, amount and class of securities involved.

(5) A director in a listed company or company whose securities are registered with the Commission shall disclose any interest in securities held in a listed company before the expiry of a period of five days from the date on which the interest arises.

(6) For the purposes of subsections (1) and (4), an interest in securities of—

- (a) the spouse of a director of a listed company or company whose securities are registered with the Commission, not being a director of the company; and
- (b) the child of a director, not being a director of the listed company or company whose securities are registered with the Commission;

shall be treated as being the director's interest.

*Register of directors' interests in securities*

152. (1) Every listed company or company whose securities are registered with the Commission shall establish and maintain a register for the purposes of section *one hundred and fifty-one* in a manner and form approved by the Commission.

(2) Whenever a listed company or company whose securities are registered with the Commission receives notification from a director in terms of section *one hundred and fifty-one*, the company shall enter in the register, against the director's name, the information received and the date of the entry.

(3) A register, established in accordance with subsection (1), shall, during normal office hours, be open for inspection by the public, without payment of any charge.

*Notification to Commission and securities exchange of directors' interests*

153. (1) A listed company or company whose securities are registered with the Commission shall, where a director discloses an interest in securities held in the listed company, in accordance with section *one hundred and fifty-one*, notify the Commission and the listing exchange, where applicable, in writing, of that matter.

(2) A listed company or company whose securities are registered with the Commission shall notify the Commission and listing exchange, where applicable, before the expiration of five days from the date on which the company was notified by the director.

(3) A listing exchange may publish, to the public, in such manner as it may determine, the information notified in accordance with subsection (1).

*Duty of substantial shareholders to disclose shareholdings*

154. Where, on the commencement of this Act, a person is a substantial shareholder in a listed company or company whose securities are registered with the Commission, the person shall give notice, in writing, within twenty eight days of the commencement of this Act, to the company, stating the person's name and address and giving full particulars of the shares held by that person or the person's nominee by which the person is a substantial shareholder.

*Subsequent disclosures by substantial shareholders*

155. (1) A substantial shareholder shall give further notice, in writing, to the listed company or company whose securities are registered with the Commission, where the person—

- (a) acquires further shares in that company; or
- (b) disposes of shares as a result of which the person ceases to be a substantial shareholder of that company.

(2) The disclosure notified, in accordance with subsection (1), shall include the following information:

- (a) the total number of shares acquired or disposed of;
- (b) the prices paid or received for the acquired or disposed of shares; and
- (c) the resultant total amount of shares held in the company and the percentage of shares it represents.

(3) Subject to subsection (1), a notification given by a substantial shareholder, in accordance with this section, shall be made five days after the acquisition of the shares.

*Registration of substantial shareholders shareholdings*

156. Where a listed company or company whose securities are registered with the Commission receives notification from a substantial shareholder, in accordance with sections *one hundred and fifty-four* and *one hundred and fifty-five*, the company shall enter in the register, established and

maintained, in accordance with section *one hundred and fifty-two*, the information so notified and specify the date of the entry.

*Notification to  
Commission and listing  
exchange of substantial  
shareholders*

157. (1) Where a listed company or company whose securities are registered with the Commission is notified of any matter, by a substantial shareholder, in accordance with section *one hundred and fifty-four* and *one hundred and fifty-five*, the company shall notify the Commission and the listing exchange, where applicable, in writing, of the matter.

(2) A disclosure of an interest in securities made by a substantial shareholder of a listed company or company whose securities are registered with the Commission shall be disclosed before the expiry of a period of five days from the date on which the company was notified by the substantial shareholder.

(3) The listing exchange may publish in such manner as it may determine, the information notified as specified in subsection (1).

*Unclaimed dividends*

158. (1) Subject to subsection (3), all dividends or other sums which are—

- (a) payable in respect of shares; and
- (b) unclaimed after having been declared or become payable;

shall be deposited in a separate special dividends payment bank account in the name of the issuer until claimed.

(2) The issuer and its agents, including the clearing and settlement agency shall ensure that they maintain complete records detailing the names of investors or shareholders and the dividend amounts payable.

(3) Notwithstanding subsection (1), if a dividend remains unclaimed—

- (a) a shareholder can claim, from the issuer, a dividend declared by the issuer, within fifteen years of the date on which the dividend became payable; or
- (b) the dividend that remains unclaimed after fifteen years of the date on which the dividend became payable shall be transferred to the Commission.

(4) Where the dividend has been transferred to the Commission, in accordance with paragraph (b) of subsection (3), the recipient shall no longer be entitled to that dividend and it shall accrue to the Commission and shall be deposited in an investor fund by the Commission for purposes of investor protection and market development activities.

(5) The Commission shall prescribe rules, by statutory instrument, on the prudential management of an investor fund into which unclaimed dividends are deposited in accordance with subsection (4).

(6) No action to recover unclaimed dividends may be brought against the issuer or against the Commission after the fifteenth year from the date on which the dividend became payable, but where the Commission considers it desirable, to avoid hardship or injustice, the Commission may make a payment to a claimant in respect of unclaimed dividends.

*Penalties for  
contravention of  
Part*

159. A listed company or company whose securities are registered with the Commission, a shareholder or an auditor who contravenes this Part, shall be liable on conviction, to a penalty not exceeding one hundred thousand penalty units and to a further penalty of ten thousand penalty units for each day the offence continues.

## PART XIV

### INFORMATION, INVESTIGATIONS, INSPECTIONS AND CO-OPERATION

*Power of Commission to  
request information*

160. (1) The Commission may, by notice in writing, require a capital markets operator, or any other person or authority who the Commission considers has relevant information, to furnish it with such information as it may require for the performance of its functions and exercise of its powers in terms of this Act, within such reasonable time as it may specify.

(2) A capital markets operator, person or authority with information sought by the Commission shall furnish the information to the Commission upon the request of any authorised employee of the Commission, failure to which the Commission shall seek a court order to compel the submission to it of such information.

(3) Subject to this Act, the Commission may, provide information furnished, in accordance with subsections (1) and (2), to other local or foreign regulatory authorities.

*Investigations*

161. (1) The Commission may appoint such number of investigators as it considers appropriate to carry out investigations for purposes of this Act.

(2) Where the Commission has reasonable cause to believe, either on its own motion or as a result of a complaint or other information received, that—

- (a) an offence has been committed as specified in this Act;
- (b) a capital markets operator may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with a securities transaction or engaged in market misconduct; or
- (c) the manner in which a capital markets operator has engaged or is engaging in a securities transaction is not in the interest of the client or the public interest;

the Commission may, in writing, direct one or more investigators, to investigate any of the matters referred to in paragraphs (a), (b) or (c) and report the results of the investigation to the Commission.

(3) Where an investigator suspects a person to have possession or control of any record or document which contains, or which is likely to contain, information relevant to an investigation, that person shall—

- (a) produce to the investigator, within the time and at the place the investigator directs in writing, any record, document or information specified by the investigator which is, or may be, relevant to the investigation and which is in the possession or control of the person;
- (b) if directed by the investigator, give the investigator an explanation or further particulars in respect of any record or document produced under paragraph (a);
- (c) attend, before the investigator, at the time and place the investigator requires, in writing, and in the prescribed manner, give a sworn statement relating to the matters under investigation; and
- (d) give the investigator all assistance in connection with the investigation which the person is reasonably able to give, including responding to any written question raised by the investigator.



(4) A sworn statement, given in accordance with subsection (3), may be relied upon in proceedings before the Tribunal or the Court.

(5) A person commits an offence if, without reasonable excuse, the person fails to—

- (a) produce any record or document required to be produced as specified in paragraph (a) of subsection (3);
- (b) give an explanation or further particulars required in paragraph (b) of subsection (3);
- (c) attend before the investigator as required in paragraph (c) of subsection (3);
- (d) answer a question put by the investigator or answers a question falsely or in a misleading manner or makes a false statement; or
- (e) comply with paragraph (d) of subsection (3).

(6) A person who commits an offence specified in subsection (5) shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Avoidance of duplication  
in investigations*

162. The Commission shall liaise and cooperate with other institutions and authorities which conduct investigations of securities markets, capital markets operators, competition and consumer protection or other relevant sectors or activity, so as to avoid duplication of information-gathering activities and applications.

*Inspections*

163. (1) For the purpose of ascertaining whether a licensed person or a person who held a licence granted in terms of this Act, is complying or had complied with this Act, and regulations or rules, made in accordance with this Act, or the terms and conditions of a licence, recognition or authorisation, the Commission may inspect any record or document relating to the business, including the inspection of the bank accounts and financial transactions of a capital markets operator.

(2) An inspector may—

- (a) enter the premises of a capital markets operator;
- (b) require the capital markets operator or any other person whom the authorised person believes is in possession of, or has under that person's control, any record or document, referred to in subsection (1), to produce it to the authorised person;
- (c) make inquiries of a capital markets operator, or any other person whom the authorised person has reasonable cause to believe has information relating to any record or document, referred to in subsection (1), concerning such record, document, transaction or activity which was undertaken in the course of, or which may affect, the business conducted by the capital markets operator; and
- (d) inspect and make copies of, or take extracts from, and where necessary, take possession of, such documents.

[(3) Missing]

(4) The Commission may appoint any person to exercise the powers of the Commission as specified in this section.

(5) For the purpose of an inspection, undertaken in accordance with this section, a capital markets operator or other person, referred to in

subsection (3), shall afford an inspector access to the records or documents as may be required for inspection and produce, to the inspector, such records or documents as the inspector may require.

(6) A person who, without reasonable excuse, fails to comply with a request made by an inspector, in accordance with this section, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or to imprisonment for a term not exceeding five years, or to both.

*Destruction of documents*

164. A person who destroys, falsifies, conceals or disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any document, which the person knows or ought to know is relevant to an inspection or investigation in terms of this Part, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Co-operation with other regulators*

165. (1) Subject to other written laws, the Commission shall consult and co-operate with any other regulatory authority exercising power, in any other written law, over a financial institution, pensions or insurance industry entity, or other entity in the capital markets, in order to minimize duplication of effort and maximize the protection of investors. (2) Where the Commission receives, from a regulatory authority outside Zambia, a request for assistance to investigate a person specified by the regulatory authority as having contravened or is contravening any legal or regulatory requirement which –

- (a) the regulatory authority enforces or administers; and
- (b) relate to securities transactions as are regulated by the regulatory authority;

the Commission may, where it is satisfied that there is need to provide assistance, as specified in subsection (3), provide the assistance to investigate the matter by exercising any of its powers under this Act.

(3) Subject to subsection (2), the Commission may provide assistance to investigate, as provided in subsection (2), if it is satisfied that—

- (a) it is desirable or expedient that the assistance requested should be provided in the public interest or it is in accordance with an agreement to provide assistance on a reciprocal basis; or
- (b) the assistance shall enable or assist the recipient of the assistance to perform its functions under any other law.

(4) The Commission shall use its best efforts to protect the confidentiality of non-public documents and information received pursuant to a request for assistance under this section.

(5) In furtherance of the purpose of this Act, the Commission may enter into a memorandum of understanding with any regulatory authority, specified in subsection (1), and with any regulatory authority of a foreign government, foreign securities regulator or other regulatory body which regulates securities transactions.

(6) The Commission may co-operate and participate in the work of a national, regional or international organisation dealing with securities transactions, markets and the securities industry.

## PART XV CIVIL LIABILITY

*Liability for  
misrepresentation in  
prospectus*

166. (1) Subject to this section, a purchaser of securities distributed under a prospectus has a right of action for damages for any loss or damage sustained by reason of a misrepresentation in the prospectus, and the following shall be liable for any loss or damage:

- (a) the issuer or the securities holder, selling securities, on whose behalf the distribution is made;
- (b) a person who is a director of the issuer at the time of filing of the prospectus;
- (c) a person who is authorised, or is named in, the prospectus as a director or as having agreed to become a director, either immediately or after a specified time;
- (d) where the issuer is not a reporting issuer prior to the distribution, any person who was a promoter of the issuer within the twenty-four month period immediately preceding the date of filing of the prospectus;
- (e) a person whose consent has been obtained to include a representation made by the person with respect to a misrepresentation in a prospectus derived from, or based on, reports, opinions, valuations or statements that have been made by such person; and
- (f) any other person who signed a certificate in the prospectus, other than a person referred to in paragraphs (a) to (e).

*Liability for  
misrepresentation in other  
documents*

167. Where an issuer or an individual or a company with actual, implied or apparent authority to act on behalf of an issuer releases a document that contains a misrepresentation, an individual or a company who acquires or disposes of the issuer's securities, during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected, has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against—

- (a) the issuer of the securities;
- (b) each director of the issuer of the securities at the time the document was released;
- (c) each officer of the issuer of the securities who authorised, permitted or acquiesced in the release of the document; and
- (d) each expert where—
  - (i) the misrepresentation is also contained in a report, statement or opinion made by the expert;
  - (ii) the document includes, summarises or quotes from the report, a statement or opinion of the expert; and
  - (iii) the document was released by a person or company, other than the expert, the expert consented, in writing, to the use of the report, statement or opinion in the document.

*Defences*

168. (1) A person shall not, other than the issuer or the security holder, who is selling the securities, or on whose behalf the distribution is made, be liable in terms of sections *one hundred and sixty-six* and *one hundred and sixty-seven* who—

- (a) having consented to become a director of the issuer, withdraws the consent before the filing of the prospectus and the prospectus;
- (b) is filed without the person's authority or consent;
- (c) when the prospectus was filed without the person's knowledge or consent, gave reasonable public notice of that fact after becoming aware of it;
- (d) after the filing of the prospectus and before the sale of securities under it, became aware of a misrepresentation and withdrew the consent, and gave reasonable public notice of the withdrawal of the consent and the reasons for it; or
- (e) for every misrepresentation, not purporting to be made on the authority of an expert or an official document or statement, had conducted such reasonable investigation as to provide reasonable grounds to believe and did believe, up to the time of the distribution of the securities, that the prospectus did not contain a misrepresentation.

(2) An individual or a company shall not be liable in an action specified in section *one hundred and sixty-seven*, if that person or company proves that the plaintiff acquired or disposed of the issuer's security with knowledge that the document contained a misrepresentation.

(3) A person or company shall not be liable in an action specified in section *one hundred and sixty-seven* if that person or company proves that—

- (a) before the release of the document containing the misrepresentation, the individual or company conducted or caused to be conducted a reasonable investigation to ascertain the accuracy of the document; and
- (b) at the time of the release of the document, the individual or company had no reasonable grounds to believe that the document contained the misrepresentation.

(4) A person, shall not be liable as specified in sections *one hundred and sixty-six* and *one hundred and sixty-seven* if—

- (a) as regards a misrepresentation made by an expert or based on a report, opinion, valuation or statement made or prepared by an expert, the misrepresentation fairly represented and was a correct and fair copy of, or extract from, the report, opinion, valuation or statement of the expert, and that person had reasonable grounds to believe and did believe, up to the time of the filing of the prospectus or release of the document, that the expert making the statement or preparing the report, opinion or valuation was competent to make it, and had given consent to the inclusion of the representation in the document and had not withdrawn that consent before delivery of a copy of the prospectus for filing or the release of the document, nor had the expert, to the person's knowledge, withdrawn that consent before the sale of securities under the prospectus or the release of the document;

- (b) the person bringing the action had knowledge of the misrepresentation at the time of the purchase or sale of the securities; or
- (c) as regards a misrepresentation purporting to be a statement made by a public official or contained in what purports to be a copy of, or extract from, a public document, the misrepresentation was a correct and fair representation of the statement or a copy of, or extract from, the document.

(5) An expert shall not be liable in an action as specified in sections *one hundred and sixty-six* and *one hundred and sixty-seven* for any part of a prospectus or other document that includes, summarises or quotes from a report, statement or opinion made by the expert, if the expert proves that the written consent previously provided was withdrawn, in writing, before the prospectus was filed or the document was released.

(6) The liability of persons, referred to in sections *one hundred and sixty-six* and *one hundred and sixty-seven*, is joint and several as between themselves with respect to the same cause of action.

(7) A person who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person who is jointly and severally liable, in terms of this section, to make the same payment in the same cause of action unless, in all the circumstances of the case, the Court is satisfied that it would not be just and equitable to do so.

*Non-derogation from other rights*

169. The right of action for damages and the defences to an action in terms of sections *one hundred and sixty-six* and *one hundred and sixty-seven*, are in addition to, and without derogation from, any other rights or defences the plaintiff or defendant may have in an action brought otherwise than under this Part.

*Action for rescission for misrepresentation in prospectus*

170. (1) Subject to this section, a purchaser of securities distributed under a prospectus has a right of action against the issuer or the underwriter, who has sold securities to the purchaser for the rescission of the sale and repayment to the purchaser, of the price that has been paid in respect of the securities, if the prospectus contained a misrepresentation, except that if the purchaser elects to exercise a right of action for rescission against the issuer or underwriter, the purchaser shall have no right of action for damages against the issuer or underwriter in terms of section *one hundred and sixty-six*.

(2) In an action brought in terms of section *one hundred and sixty-six*, the person bringing the action need not prove that the person was in fact influenced by the misrepresentation, or that the person relied on the misrepresentation in purchasing the securities.

(3) A person shall not be liable, as specified in subsection (1), if the purchaser who brought the action knew of the misrepresentation at the time of the purchase of the securities.

(4) This section applies to securities sold under a prospectus that offers the securities for subscription in consideration of the transfer or surrender of other securities, with or without the payment of cash by, or to, the issuer, as though the issue price of the securities offered for subscription were the fair value, as ascertained by the Court, of the securities to be transferred or surrendered, including the amount of cash, if any, to be paid by the issuer.

*Limitations on actions*

171. (1) Notwithstanding any other provision to the contrary, the amount recoverable in terms of section *one hundred and sixtysix* or *one hundred and sixty-seven* shall not exceed the price at which the securities were sold.

(2) A dealer shall not be liable for underwriting, as provided in section *one hundred and sixty-six*, for more than the total public offering price represented by the portion of the distribution of securities underwritten or sold by, or to, the dealer.

(3) An action shall not be brought, as specified in section *one hundred and sixty-six*, later than—

- (a) two years after the date that the securities were sold to the person bringing the action; or
- (b) one hundred and eighty days after the date that the purchaser bringing the action learnt of the misrepresentation.

(4) An action shall not be brought, as specified in section *one hundred and sixty-six*, later than—

- (a) three years after the date on which the document containing the misrepresentation was first released; and
- (b) six months after the issuance of a news release disclosing that leave had been granted to commence an action in accordance with section *one hundred and sixty-six*, in respect of the same misrepresentation.

*Leave to proceed*

172. (1) An action shall not be commenced, in accordance with section *one hundred and seventy* without leave of the Court, granted on a motion with notice to each defendant.

(2) The Court shall grant leave where it is satisfied that—

- (a) the action is being brought in good faith; and
- (b) there is a reasonable possibility that the action shall be resolved at trial in favour of the plaintiff.

(3) The plaintiff and each defendant shall on an application made in accordance with this section, serve and file one or more affidavits setting forth the material facts upon which each intends to rely on.

(4) The maker of an affidavit, filed in accordance with subsection (3), may be examined on it by the Court.

(5) A copy of the application for leave to proceed and any affidavits filed with the Court shall be sent to the Commission, immediately after being filed, by the plaintiff and each defendant.

*Notice of action*

173. An individual or a company that has been granted leave to commence an action, in accordance with section *one hundred and seventy-two*, shall—

- (a) promptly issue a news release, in a newspaper of wide circulation, disclosing that leave has been granted to commence an action, in terms of section *one hundred and seventy-two*;
- (b) send a written notice of the order for leave to proceed to the Commission, within seven days, together with a copy of the news release; and
- (c) send a copy of the documents filed into Court to the Commission.



*Restriction on discontinuation, etc. of action*

174. An action, commenced in accordance with section *one hundred and sixty-six* and *one hundred and sixty-seven* shall not be discontinued, abandoned or settled without the approval of the Court given on such terms as the Court considers appropriate in the case, including, terms as to costs, and in determining whether to approve the settlement of the action, the Court shall consider, whether there are any other actions outstanding, in Zambia in terms of section *one hundred and sixty-six* and *one hundred and sixtyseven*, in respect of the same misrepresentation or failure to make a timely disclosure.

*Rights of Commission to bring representative action*

175. (1) The Commission may apply to the Court for leave to bring an action, in accordance with this Part, in the name, and on behalf of, an issuer or securities holder, and the Court may grant leave on such terms as to security for costs that the Court considers appropriate, if the Court is satisfied that—

- (a) the Commission has reasonable grounds for believing that a cause of action exists under this Part;
- (b) the issuer or securities holder has failed or is unable to commence an action; and
- (c) the Commission has given sixty days written notice to the issuer or securities holder who has refused or failed to commence an action.

(2) The Commission may apply to the Court for leave to appear or intervene in an action under this Part and the Court may grant leave on such terms as it considers appropriate.

(3) The Commission may publish a summary of the terms of any settlement of an action commenced or intervened by it in a regular periodical published by it, or in a newspaper of general circulation in Zambia.

## PART XVI COMPENSATION FUND

*Compensation Fund*

176. The Compensation Fund established by the Minister in the repealed Act is continued and maintained for the purposes of this Act.

*Purpose of Fund*

177. The Compensation Fund shall be held and applied on such terms and conditions as the Minister may, by regulations, determine for the purposes of compensating persons who suffer pecuniary loss occasioned by any default of a licensed person or any employee of a licensed person, in the course of, or in connection with, any dealing in securities, being a loss in relation to any money, securities or other property which was entrusted to, or received by, the licensed person or an employee for, and on behalf of, the licensed person.

*Compensation Fund Committee*

178. (1) There is constituted the Compensation Fund Committee which shall be responsible for the management and administration of the Compensation Fund and for the settlement of claims against the Fund.

(2) The members of the Compensation Fund Committee shall be constituted of persons from the following organisations which shall nominate one individual for appointment by the Commission:

- (a) the Bankers' Association of Zambia;
- (b) an association of capital markets players;
- (c) the Ministry responsible for finance;

- (d) the Law Association of Zambia;
- (e) the Zambia Chamber of Commerce and Industry; and
- (f) the Commission.

(3) The members of the Compensation Fund Committee shall elect the Chairperson and Vice chairperson, of the Committee, from amongst the members.

(4) The Committee may, subject to this Act, regulate its own procedure.

*Monies of Fund*

179. The Compensation Fund shall consist of—

- (a) monies paid to or deposited into the Fund by dealers and investment adviser, as prescribed;
- (b) monies recovered by, or on behalf of, the Fund in the exercise of any right of action conferred by this Part;
- (c) interests and profits accruing from the investment made; and
- (d) monies lawfully paid into the Fund.

*Disbursements from Compensation Fund*

180. There shall be paid out of the Compensation Fund and in such order as the Compensation Fund Committee considers fair and just in the circumstances—

- (a) the amount of claims for compensation, including costs, allowed by the Compensation Fund Committee;
- (b) legal and other expenses incurred in investigating or defending claims for compensation made in terms of this Act, or incurred in relation to the Fund, or in the exercise by the Committee of the rights, powers and authorities vested in it by this Act;
- (c) premiums payable in respect of contracts of insurance or indemnity entered into by the Compensation Fund Committee;
- (d) the expenses incurred or involved in the administration of the Fund;
- (e) the insolvency, bankruptcy or negligence costs resulting from an action of a licensed person;
- (f) defalcation committed in terms of this Act; and
- (g) other moneys lawfully payable out of the Fund, as prescribed by the Minister.

*Management of Fund*

181. The Minister may make regulations prescribing all such matters and things as are necessary or expedient to be prescribed for, or with respect to, the administration, management and financial management and integrity of the Compensation Fund.

*Limited liability of Fund and insurance by licensed persons*

182. (1) The Minister may, by statutory instrument, prescribe the liability of the Fund, where a licensed person is in default on contribution payments to the Fund.

(2) A licensed person shall, in addition to contributing towards the Compensation Fund, take out insurance against the liabilities that may arise from the negligence or default of the licensed person, and employees of the licensed person.

*Recovery of disbursements from licence defaulters*

183. Any disbursement from the Compensation Fund that is on account of a default by a licensed person shall be a debt due to

the Fund and recoverable, from the licensed person, at the suit of the Commission.

## PART XVII CAPITAL MARKETS TRIBUNAL

### *Establishment of Tribunal and jurisdiction*

184. (1) There is established the Capital Markets Tribunal.
- (2) The Tribunal shall be a superior court of record and have an official seal which shall be judicially noticed.
- (3) The Tribunal shall have jurisdiction to hear and determine —
- (a) appeals from decisions of the Commission, or a person exercising the functions or powers of the Commission;
  - (b) proceedings relating to misconduct in the securities market; and
  - (c) such other matters as may be specified in, or prescribed in terms of this Act or any other written law.

### *Members of Tribunal*

185. (1) The Tribunal shall consist of the following part-time members who shall be appointed by the Minister:
- (a) a Chairperson, who shall be a person eligible to be appointed as a Judge of the High Court;
  - (b) a Vice Chairperson, who shall be a person eligible to be appointed as a Judge of the High Court;
  - (c) three other members with knowledge and experience in law, securities, commerce, finance or accountancy.
- (2) The members, referred to in paragraph (a) and (b), shall be appointed in consultation with the Judicial Service Commission.
- (3) The members of the Tribunal shall be appointed on such terms and conditions as maybe specified in their letters of appointment.
- (4) A person shall not be appointed as a member of the Tribunal if the person —
- (a) is an undischarged bankrupt;
  - (b) is of unsound mind; or
  - (c) has been convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months without the option of a fine.
- (5) The office of a member of the Tribunal shall become vacant—
- (a) upon the member's death;
  - (b) if a member is absent without reasonable excuse from three consecutive sittings of the Tribunal of which the member had notice;
  - (c) if the member is removed by the Minister on grounds of inability to perform the functions of office whether arising from infirmity of body or mind, incompetence or misbehaviour;
  - (d) if the member is adjudged bankrupt;
  - (e) the member becomes mentally or physically incapable of performing the duties of a member;
  - (f) if a member is removed on disciplinary grounds confirmed by the relevant professional or regulatory body; or

(g) if the member is convicted of an offence under any written law and sentenced to imprisonment for a period exceeding six months, without the option of a fine.

(6) If a vacancy occurs, in accordance with subsection (4), the Minister may appoint a new member in accordance with subsection (1), but the member shall hold office only for the unexpired period of the term.

(7) The validity of any proceedings, act or decision of the Tribunal shall not be affected by any vacancy in the membership of the Tribunal or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

*Tenure of office of members of Tribunal*

186. A member of the Tribunal shall hold office for a period of four years from the date of appointment and may be re-appointed for a further term of four years.

*Funding and allowances of members of Tribunal*

187. (1) The expenses and costs of the Tribunal shall be paid out of funds appropriated by Parliament for the performance of the Tribunal's functions under this Act.

(2) The members of the Tribunal shall be paid such remuneration and allowances as the Minister may determine.

*Appointment and functions of Registrar of Tribunal*

188. (1) There shall be a Registrar of the Tribunal who shall be appointed by the Minister in consultation with the Judicial Service Commission.

(2) The Registrar shall be a person with not less than ten years legal experience.

(3) The Registrar of the Tribunal shall be the chief administrative officer of the Tribunal and shall be responsible, under the general supervision of the Chairperson, for the effective and efficient administration of the affairs of the Tribunal, and may discharge such duties as prescribed by the rules of the Tribunal.

(4) The terms and conditions of service of the Registrar of the Tribunal shall be as determined by the Tribunal.

*Staff of Tribunal*

189. (1) There shall be such officers and employees of the Tribunal, as may be necessary to carry out the functions of the Tribunal, appointed by the Tribunal.

(2) The terms and conditions of service of staff of the Tribunal shall be as determined by the Tribunal.

*Exercise of powers of Tribunal and procedure*

190. (1) The tribunal shall be constituted and exercise the following powers and functions as specified in this section:

- (a) any matter, by the Chairperson or Vice-Chairperson sitting with at least two other members or by the full membership;
- (b) any matter of practice or procedure, by the Chairperson or any member of the Tribunal who is assigned for that purpose by the Chairperson; or
- (c) any matter of practice or procedure, which is uncontested, by any member of the Tribunal assigned generally or specifically for that purpose by the Chairperson.

(2) The Tribunal may sit in more than one division at such places and times, in any part of Zambia, as the Chairperson or, in the absence of the Chairperson, the Vice Chairperson may determine.

(3) The Chairperson, when present, shall preside, and, in the absence of the Chairperson, the Vice-Chairperson shall preside.

(4) The Tribunal shall, when hearing any matter, be duly constituted if it consists of three members which members shall include the Chairperson or the Vice-Chairperson.

(5) The Chief Justice may, by statutory instrument, make rules relating to the following:

- (a) prescribing the forms to be used in proceedings before the Tribunal;
- (b) issuing of notices for the attendance at, and hearings of, the Tribunal, including time periods;
- (c) procedure for the attendance and examination of witnesses, the production and inspection of documents, the enforcement of the Tribunal orders, the entry on and inspection of property and other matters necessary or proper for the due exercise of the Tribunal's mandate;
- (d) written submissions to be filed in addition to, or in the place of, an oral hearing;
- (e) the carrying on of the functions of the Tribunal and the practice and procedure on appeals and disciplinary hearings; and
- (f) awarding of costs of proceedings before the Tribunal.

(6) A summons for the attendance of a witness or for the production of any book, document, record or other thing shall be signed by the Registrar of the Tribunal and served in the same manner as a subpoena for the attendance of a witness at a civil trial in a Court.

(7) The decision of the Tribunal shall be that of the majority of the members considering the matter.

(8) The decision of the Tribunal in any proceedings shall be delivered by the presiding member.

#### *Appeals to Tribunal*

#### 191. (1) Where –

- (a) an application of a person for a licence, made in accordance with this Act, is refused or denied;
- (b) a licence, registration, authorisation or recognition, granted in accordance with this Act, is subject to conditions which the applicant is dissatisfied with;
- (c) conditions are attached to, or varied for, a license, registration, authorisation or recognition, and the licensed person, self-regulatory organisation or other person is dissatisfied with the conditions or variation;
- (d) a licence, registration, authorisation or recognition, granted in accordance with this Act, is revoked or cancelled in accordance with this Act;
- (e) the Commission declines to register any securities in accordance with this Act; or
- (f) the Commission declines to authorise the establishment of a collective investment scheme in accordance with this Act.

the applicant, person, licensed person or self-regulatory organisation may appeal to the Tribunal, within thirty days of receipt of the decision.

(2) Notwithstanding subsection (1), the Tribunal shall hear an appeal on any matter specified in this Act, being a matter that an aggrieved person, licensed person, scheme or organisation is entitled to appeal on in accordance with this Act.

#### *Notice of appeal*

192. (1) An appeal, to the Tribunal shall be instituted by filing with the Registrar of the Tribunal, a notice of appeal, accompanied with the prescribed fee, and by serving a copy of the notice on the Commission, within twenty-eight days of the notification to, or the service on, the respondent, or within such other time as may be required by the rules prescribed by the Chief Justice.

(2) Notwithstanding subsection (1), an appeal may be instituted out of time if the Tribunal is satisfied that there was a reasonable cause for not appealing within the time prescribed and that the appeal was filed thereafter without unreasonable delay.

(3) A notice of appeal shall specify the grounds of appeal and be in such form and manner as may be prescribed by rules issued by the Chief Justice.

(4) If, on the hearing of an appeal, the appellant desires to bring in any ground of appeal, which was not specified in the notice of appeal, and the omission of that ground from the notice was, in the opinion of the Tribunal, not wilful or unreasonable, the Tribunal shall not be precluded from allowing the appellant to bring in that ground or take such ground into consideration.

(5) The Commission shall, within seven days, after receiving a notice of appeal, forward to the Tribunal copies of all documents relevant to the decision appealed from.

#### *Hearings before Tribunal*

193. (1) An appeal shall be heard in public, unless the Tribunal, on the application of the applicant, otherwise directs.

(2) The Tribunal may dispose of an appeal by—

- (a) confirming, varying or setting aside an original order, or decision and, where the original order or decision is set aside, by substituting the original order or decision as the Tribunal considers appropriate;
- (b) remitting the matter in question to the Commission with such directions as it considers appropriate; or
- (c) making any other order which the Tribunal considers appropriate.

(3) Where the Tribunal varies or substitutes any order or decision as provided in paragraph (a) of subsection (2), the order or decision as varied or substituted shall be the decision of the Commission on appeal.

(4) The Tribunal shall deliver a judgment within sixty days of the conclusion of the hearing of a matter and the judgment or decision of the Tribunal shall be reasoned.

(5) The standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in the Court of law.

(6) A person aggrieved with the decision of the Tribunal may, within thirty days of receipt of the decision, appeal to the Court of Appeal.

(7) The Registrar of the Tribunal shall cause every award, decision or judgement of the Tribunal to be communicated to the parties concerned.



(8) The Tribunal shall cause to be kept a record of its proceedings.

*Market misconduct proceedings*

194. (1) The Commission may institute proceedings before the Tribunal, if it appears to the Commission that any ~~licensed~~ person has committed an act of misconduct in the capital market, as prescribed.

(2) The Commission shall institute proceedings by giving the Tribunal a notice, in writing, as prescribed, which notice shall contain a statement specifying the grounds being relied on and the matters specified in subsection (3).

(3) Without limiting the generality of subsection (2), the Tribunal shall determine—

- (a) whether any act of misconduct in the capital markets has been committed;
- (b) the amount of profit gained or loss avoided as a result of the act of misconduct in the capital markets.

(4) The Tribunal may, where an act of misconduct in the capital markets is proven, order that a person identified as having engaged in the act of misconduct be subject to the following order—

- (a) payment of an administrative fine, payable to the Commission, as may be prescribed;
- (b) censure, including the publication of a notice in a newspaper of general circulation;
- (c) compensation or restitution to any person, on such terms as the Tribunal may direct;
- (d) account for, in such form and on such terms as the Tribunal may direct, such amounts as the Tribunal determines to be profits arising from the act of misconduct or any other form of unjust enrichment determined by the Tribunal;
- (e) cease and desist from such activity as the Tribunal may determine;
- (f) do any act or thing;
- (g) be prohibited from being, or becoming, a senior officer or director of a reporting issuer or participant; or
- (h) pay a specified amount, being all or part of the costs of the proceedings, including those of any other party to the proceedings.

(5) Notwithstanding subsection (1), the Commission may refer any matter to the Director of Public Prosecutions, and the appropriate investigative wing, if it appears to the Commission that the act of misconduct in the market or industry may constitute a criminal offence.

*Orders of Tribunal*

194A. (1) The Tribunal may, where on the application of the Commission it appears to the Tribunal that a person has contravened this Act or any conditions of the licence, make one or more of the following orders:

- (a) an order restraining a person from acquiring, disposing of, or otherwise dealing with any securities or assets specified in the order;
- (b) in relation to a capital markets operator, an order appointing a person to administer the property of the capital markets operator;

- (c) an order declaring a contract relating to securities to be void or voidable;
- (d) an order directing a person to do or refrain from doing a specified act for the purpose of securing compliance with any other order under this section; or
- (e) any ancillary order that the Tribunal considers necessary under this section.

(2) The Tribunal shall, before making an order under this section, satisfy itself that the order would not unfairly operate to the detriment of a person.

(3) The Tribunal may, before making an order under subsection (1), direct that notice of the application referred to in subsection (1) be given to persons as the Tribunal considers necessary or direct that notice of the application be published in a manner as the Tribunal considers necessary, or both.

(4) The Tribunal may reverse, vary, or discharge an order made under this section or suspend the operation of the order.

*Appeal to Court of Appeal*

195. (1) A party to the proceedings before the Tribunal may, if dissatisfied with an order or a decision of the Tribunal, appeal to the Court of appeal against that order or decision.

(2) A party that intends to appeal against an order or decision of the Tribunal in accordance with subsection (1) shall —

- (a) apply to the Tribunal for leave to appeal if the leave to appeal against the order or decision is not granted in the order or decision; or
- (b) apply to a judge of the Court of Appeal for leave to appeal if the Tribunal refuses to grant the leave under paragraph (a).

*Immunity of members and staff of Tribunal*

195A. An action shall not lie or be instituted against a member of the Tribunal or a member of staff of the Tribunal for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

## PART XVIII OFFENCES ON IMPROPER TRADING PRACTICES

*Penalty in substitution of penalty units*

196. In this Part, where a section provides that a person is liable to payment of penalty units for committing an offence, the Court may impose, taking into account the size of the transaction or severity of the offence, in substitution of the penalty units, a penalty of ten percent of the annual turn-over of the business of the capital markets operator, if the turn-over is higher than the penalty units provided.

*Fraudulent transactions*

197. A person who, directly or indirectly, in connection with any securities transaction—

- (a) employs any device, scheme or artifice to defraud another person; or
- (b) engages in any act, practice or course of business, which operates as a fraud or deception, or is likely to operate as a fraud or deception, of another person;

commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*False trading and manipulation of the market*

198. (1) A person shall not create or cause to be created, or do anything with the intention of creating—

- (a) a false or misleading appearance of the volume of trading in securities on any securities exchange; or
- (b) a false or misleading appearance of the market for, or the price of, securities.

(2) A person shall not, in a securities transaction that does not involve a change in the beneficial ownership of securities or by any fictitious transaction or device, maintain, inflate, depress or cause fluctuations in the market price of securities.

(3) A securities transaction shall not, for the purposes of subsection (2), involve a change in the beneficial ownership if a person who had an interest in the securities, before the securities transaction, or a person associated with the person in relation to the securities, holds an interest in the securities after the securities transaction.

(4) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*Use of deceptive statements, etc. as inducements*

199. A person who induces or attempts to induce another person to deal in securities—

- (a) by making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts; or
- (c) by recklessly or dishonestly making or publishing any statement, promise or forecast that is false or misleading;

commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*False statements to securities exchange, etc.*

200. (1) A person shall not make a statement or give information to a securities exchange, self-regulatory organisation or a clearing and settlement agency, being a statement or information that the person is required to give in terms of this Act, where the person knows or ought reasonably to have known that the statement or information is false or misleading.

(2) A person shall not omit to state any matter, in or in connection with any application to a securities exchange, self-regulatory organisation or a clearing and settlement agency, being a matter required by this Act or regulations or rules made in accordance with this Act, where the person knows or ought reasonably to have known that, because of the omission, the application is misleading in a material respect.

(3) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*False or misleading statements on sale of securities*

201. A person who, directly or indirectly, for the purpose of inducing a securities transaction, makes with respect to the securities, or with

respect to the operations or the past or future performance of the listed company—

- (a) any statement which is, at the time and in light of the circumstances in which it is made, false or misleading with respect to any material fact and which the person knows or has reasonable grounds to believe to be false or misleading; or
- (b) any statement which is, by reason of the omission of a material fact, rendered false or misleading and which the person knows or has reasonable grounds to believe is rendered false or misleading by reason of omission of that fact;

commits offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a term not exceeding ten years, or to both.

*Damages for loss sustained*

202. (1) A person who is convicted of an offence as specified in this Part shall, in addition to any criminal liability for the offence, be liable, at the suit of any person who has sustained pecuniary loss as a result of having purchased or sold securities at a price affected by the act or transaction which comprises or is the subject of the offence, to an action for damages in respect of the loss incurred.

(2) Nothing in this section limits or diminishes any civil liability which any person may incur in terms of any other law.

*Failure to furnish information*

203. A person who refuses or fails, without reasonable excuse, to furnish information or a document that the person is required to furnish in terms of this Act or any regulations or rules, made in accordance with this Act, commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units, or imprisonment for a term not exceeding ten years, or to both.

*Obstructing Commission, Chief Executive Officer, etc.*

204. A person who hinders or obstructs the Commission, the Chief Executive Officer or any person authorised by the Commission or Chief Executive Officer, in the performance of their functions as provided in this Act or any regulations or rules, made in accordance with this Act, commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand penalty units, or imprisonment for a term not exceeding five years, or to both.

## PART XIX MISCELLANEOUS PROVISIONS

*Fraudulent applications*

205. A person who, for the purposes of obtaining a licence, in accordance with this Act, whether for oneself or for any other person, makes any representation, whether in writing, orally or otherwise, which that person knows to be false or misleading as to a material particular, commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or to imprisonment for a period not exceeding ten year, or to both.

*Designation of compliance officer of licensed person*

206. (1) A licensed person shall, after the approval of the Commission, designate a compliance officer in accordance with prescribed guidelines and rules.

- (2) A compliance officer shall —
- (a) monitor and report, to the Commission, compliance of a licensed person in respect of the obligations specified in this Act and any codes, policies, procedures or systems prescribed in this Act or regulations or rules made in accordance with this Act;
  - (b) advise and assist the licensed or authorised person in complying with its obligations in accordance with this Act;
  - (c) review policies and procedures for management of conflicts of interest and assess the risk of noncompliance of such policies and procedures; and
  - (d) submit reports to the Commission on compliance by licensed persons.

*Commission's power over licensed persons*

207. (1) The regulatory powers conferred on the Commission over a licensed person, in this Act, may only be exercised if it appears to the Commission that the person is not a fit and proper person to be a licensed person and—

- (a) the person has contravened or failed to comply with a provision of this Act or regulations or rules made in accordance with this Act, is in purported non-compliance with any such provision or has furnished the Commission with information that is false, inaccurate or misleading; or
- (b) the exercise of the power is otherwise necessary for the protection of current or future investors.

(2) The Commission may recommend, to a securities exchange, clearing and settlement agency, dealer, investment advisor, or self-regulatory organisation, the removal from office of a person in senior management who is not compliant with subsection (1).

*Association of Capital Market Operators*

208. (1) The Capital Markets Operators shall establish an association of Capital Market Operators for the purpose of establishing and enforcing a code of conduct and promoting the development of Capital Markets.

(2) The Commission shall not licence a Capital Markets Operator that is not a member of the association referred to in subsection (1).

(3) An association established under this section shall apply to the Commission to be recognised as a self-regulatory organisation in the prescribed manner and form.

*Disciplinary actions*

209. (1) A board of a securities exchange or the Commission, if the board fails to act, may suspend, expel or otherwise discipline any member of the securities exchange, or deny any member access to the securities exchange, in accordance with the exchange rules.

(2) Any suspension, expulsion, disciplinary or access denial procedures, prescribed by an exchange rules, shall provide for written notice to the Commission and to the member who is suspended, expelled, disciplined or denied access, which shall include the reasons for the action or decision taken, within thirty days of the taking of such action or decision.

(3) A board of a securities exchange or the Commission shall make public its findings and the reasons for any action taken in any proceeding in terms of this section.

(4) The Commission may, by notice in writing, for a period not exceeding six months, suspend, a director, manager or officer concerned in the management of a capital market operator who fails to take reasonable steps to secure compliance by the capital market operator with the requirements of this Act or the Regulations.

(5) The Commission may, before the expiry of the period of suspension referred to in subsection (4), apply to the Tribunal for an order extending the suspension for such period as the Tribunal considers necessary, or removing the director, manager or officer from office.

(6) Despite subsection (5), the Commission may recommend to a capital market operator for the removal from office of a director, manager or officer who fails to take reasonable steps to secure the compliance of the capital market operator with this Act and Regulations without suspending the director, manager or officer.

(7) Where a director, manager or officer is suspended or removed from office under this section, the director, manager or officer shall not perform any duty pertaining to the office during the period of suspension, or after removal from office.

(8) A person who contravenes subsection (7) commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

#### *Review by Commission*

210. (1) The Commission may, in accordance with such standards and procedures as it may consider appropriate, review any decision made by a board of a securities exchange or a clearing and settlement agency in which a person is suspended, expelled or otherwise disciplined or denied access to the securities exchange.

(2) The Commission may, by order, affirm, modify, set aside or remand any decision it reviews, pursuant to subsection (1), after a determination, on the record, whether the action of the board was in accordance with this Act and its exchange rules.

(3) Any order of the Commission, made in terms of subsection (2), shall govern the securities exchange in its further treatment of the matter.

(4) The Commission may order a stay of any action taken, pursuant to subsection (1), pending review of the action.

#### *Codes and guidelines*

211. (1) The Commission may publish, in the Government Gazette and a daily newspaper of general circulation in Zambia, and in any other manner it considers appropriate, such codes and guidelines as it considers necessary for providing guidance—

- (a) for the furtherance of any of its regulatory objectives; and
- (b) in relation to any matter relating to the functions of the Commission or operation, compliance and enforcement of this Act or rules or regulations made in accordance with this Act.

(2) A code, guideline, directive or guidance notes issued by the Commission, in accordance with this Act, shall be complied with, failure to which the Commission may impose an administrative penalty as provided in this Part.

#### *Guidance notes, etc.*

212. The Commission may issue such directives, guidance notes, bulletins or other regulatory statements as the Commission may consider



necessary or desirable for the administration of this Act, or rules and regulations made in accordance with this Act.

*Access to documents*

213. (1) Subject to this section, any person may, on request, review or copy any document lodged with the Commission in terms of this Act or any regulations or rules made in accordance with this Act.

(2) The Commission may, by rules, specify procedures for making requests for access, as provided in subsection (1), and the terms and fees to be paid for purposes of such access.

(3) The Commission may refuse to authorise a document to be reviewed or copied, in whole or part, where it is satisfied that—

- (a) information in the document is confidential to the person lodging the document and has a real commercial value to the person that would be seriously and unreasonably prejudiced if the information were to be made generally available; or
- (b) information in the document is personal information about a person and it is in the public interest that the information should not be generally available.

*Control of advertisements*

214. (1) The Commission may make rules in respect of the publication, form and content of securities advertisements.

(2) Rules made in accordance with subsection (1) may—

- (a) prohibit the publication of advertisements of any description, whether by reference to their contents, to the persons by whom they are published or otherwise;
- (b) make provision as to the matters which should or should not be included in such advertisements;
- (c) provide for any exemptions from any requirement imposed by this Act; and
- (d) provide for offences and penalties for the breach of any requirement of the rules.

(3) Where, it appears to the Commission that a securities advertisement—

- (a) does not comply with any requirement imposed in the rules made in terms of this section; or
- (b) is false or misleading;

the Commission shall give such directives to the person who has published or caused to be published the securities advertisement as it considers appropriate in the circumstances.

(4) A directive given, in terms of subsection (1), may require—

- (a) a person to modify, in whole or in part, the advertisement; or
- (b) the publication of the securities advertisement to cease.

(5) Nothing in this section shall prejudice any remedy that an aggrieved person may have against a person who published or caused to be published an advertisement contrary to the requirements of the rules made in accordance with this section.

(6) A person who contravenes this section commits an offence and shall be liable, on conviction, to a fine not exceeding one million penalty units or imprisonment for a term not exceeding ten years, or to both.

*Offences committed partly in and partly out of Zambia*

215. (1) Where this Act or any rules and regulations made in accordance with this Act, provides that a person commits an offence where

the person does a particular act, the offence is deemed to have been committed even where the act is done partly outside Zambia.

(2) Where this Act or any regulations and rules, made in accordance with this Act, provides that a person commits an offence where the person does two or more particular acts, the offence is deemed to have been committed even if some of those acts are done outside Zambia.

*Continuing acts or offences*

216. Where, in accordance with this Act –

- (a) an act is required to be done within a particular period or before a particular time and the obligation to do the act continues after the period has ended or the time has passed; or
- (b) failure or refusal to comply with the provision is an offence and such failure continues;

the person commits a separate offence for each day on which the failure or refusal continues and shall be liable to an administrative penalty for each day on which the failure or refusal continues or, on conviction, to a penalty prescribed by the Minister, by statutory instrument, for each day that the offence continues.

*Actions by Commission on conviction of offence*

217. (1) A person who is convicted of an offence, in accordance with this Act, shall have that person's licence, registration, authorisation or recognition revoked or cancelled, as the case may be, and may not be licensed, authorised, registered or recognised, in terms of this Act, for a period determined by the Commission and may be barred from participating, in any manner, in any securities market on such terms and conditions as the Commission may determine.

(2) The Commission may, upon petition, review the disqualification and bar and, for good cause shown, reduce the period, provided in terms of subsection (1).

*Administrative penalties*

218. (1) Where the Commission is satisfied, after due investigation, or where a person admits that the person has committed an offence under this Act or regulations or rules, made in accordance with this Act, the Chief Executive Officer, may compound the offence and impose an administrative penalty as specified in subsection (2).

(2) The Commission may impose any of the following penalties as an administrative penalty:

- (a) a public or private censure or reprimand;
- (b) where a fine is provided for an offence, an amount of money not exceeding fifty percent of the maximum of the fine; or
- (c) where no penalty is provided for an offence, an amount of money to be determined by the Commission but not exceeding double the monetary gain to the person for each contravention.

(3) If a person, on whom an administrative penalty is imposed in accordance with this section, fails to pay the penalty within the time ordered by the Commission, the Commission may, recover the penalty by action in a court of competent jurisdiction.

*General offences*

218A. A person commits an offence if that person, without reasonable excuse, neglects or fails to comply with, a provision of —

- (a) this Act or a directive, order, condition, requirement, determination or request made under this Act; or

- (b) any regulations or rules made pursuant to this Act or any directive, order, condition, requirement, determination or request made under those regulations or rules.

*General penalty*

218B. A person who contravenes a provision of this Act for which a specific penalty is not provided is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

*Offence by body  
corporate or  
unincorporate body*

219. Where an offence is committed by a body corporate or an unincorporate body, every director or manager of the corporate or unincorporate body is liable, on conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the Court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

*General rules by  
Commission*

220. (1) The Commission may, by statutory instrument, make rules for or with respect to any matter that by this Act is required or permitted to be prescribed by the Commission, or that is necessary to be prescribed for purposes of carrying out or giving effect to this Act.

(2) Without prejudice to the generality of subsection (1), rules made under that subsection may make provision for—

- (a) the conduct of business by licensed persons and their representatives;
- (b) matters incidental to the licensing of any person under this Act;
- (c) the class of persons in relation to whom, and the manner and circumstances in which, licensed persons and their licensed representatives may deal in securities;
- (d) the types of securities in which licensed persons and their representatives may deal;
- (e) the correction of any errors in any register or record kept in accordance with this Act;
- (f) particulars to be recorded for the purposes of this Act, in relation to accounts of licensed persons;
- (g) the lodgment of auditor's reports and the information to be contained in the auditor's report;
- (h) the lodgment by licensed persons of annual financial statements;
- (i) the forms to be used for the purposes of this Act, and the manner in which applications are to be made;
- (j) the fees and charges to be levied and paid in respect of any matter or thing required or permitted to be done for the purposes of this Act;
- (k) the exemption, on such terms and conditions as may be prescribed of any bank, financial institution or person from any specified provision of this Act or any rule made under this Act, and the revocation of any such exemption or the modification of any such terms or conditions;
- (l) administrative penalties to be imposed;

- (m) the types of business that the Commission considers as constituting securities activities;
- (n) the authorization and conduct of credit rating agencies and the rating of securities by the agencies;
- (o) maintenance of the confidentiality of clients of licensed persons;
- (p) information and the matters to be displayed on business stationery of licensed persons;
- (q) insurance by licensed persons against negligence or default;
- (r) the issue of duplicate licences in case of loss or destruction;
- (s) dealings in securities including margin and position limits;
- (t) the practice and conduct of share registers;
- (u) the arbitration of disputes involving licensed persons;
- (v) the making of annual or other regulatory returns to the Commission by licensed persons;
- (w) mandatory disclosures and registration of interests in securities;
- (x) determination of fit and proper test for directors or licensed persons;
- (y) anti-money laundering and countering the financing of terrorism by licensed persons;
- (z) any saving or transitional provisions the Commission considers necessary or convenient to be made in consequence of the enactment of this Act and the repealed Act; and
- (aa) operation and management of a collective investment scheme.

(3) The Commission may, by statutory instrument, make other rules to provide for—

- (a) the contents, form and issue of a prospectus, financial statements, annual reports and other documents required or provided for in this Act;
- (b) requirements for the display and use of unique numbers allocated for licences;
- (c) securities requirements for transactions, including requirements prohibiting or restricting an issuer from commencing or carrying out business or applying funds raised in an offering;
- (d) the procedure for the clearance and settlement of securities;
- (e) categories of securities that shall be dematerialised;
- (f) the formulation and publication of codes of conduct for licensed persons, their officers and employees;
- (g) the categorisation of collective investment schemes for the purposes of this Act or any regulations made under this Act;
- (h) requirements for licensees to make reports to the Commission, securities exchanges, their clients or participants in the schemes, either regularly or on the occurrence of specified events or circumstances;
- (i) requirements for contents, publication and dissemination of reports to the Commission by —

- (i) licensed persons;
- (ii) officers and former officers of licensed persons;
- (j) prudential rules, including rules as to capital adequacy, assets and other resources for licensed persons;
- (k) disclosures to be made by licensed persons;
- (l) offer of securities through the electronic media;
- (m) keeping of books and records by licensed persons;
- (n) the transfer of business, contracts or other engagements of a licensed person on insolvency or winding up;
- (o) the taking of fees and the levying of charges;
- (p) any form of trading of securities including turnaround trading and short-selling, and lending and borrowing on securities;
- (q) the criteria for declaration as publicly traded companies;
- (r) the de-registration of securities; and
- (s) the effective administration and implementation of this Act.

(4) The Commission may issue rules prescribing the segregation and safe custody of client moneys or other property.

(5) The Commission shall, before making the rules as prescribed in this section publish proposals for the rules in a newspaper or electronic media of general circulation and shall take into account any representations made to the rules.

#### *Regulations*

221. (1) The Minister may, by statutory instrument, make regulations as provided or required to be prescribed in this Act and as are necessary to give effect to the provisions of this Act.

(2) Notwithstanding the generality of subsection (1), the Minister may prescribe the—

- (a) procedure and qualifications for licensing of dealers, investment advisers, share transfer agents and representatives;
- (b) procedure for applying for a licence and the grant, modification, renewal, transfer, suspension and revocation of a licence;
- (c) terms and conditions attaching to the application, grant, modification, refusal, renewal, transfer, suspension or revocation of a licence;
- (d) performance standards relating to the issuance of certificates, record keeping and reporting;
- (e) prompt and accurate creation of securities and the safeguarding of securities and funds by share transfer agents; and
- (f) procedures for claims and access to the Compensation Fund.

#### *Repeal of Securities Act and savings Cap. 354 Cap.354*

222. (1) The Securities Act, 1993 is hereby repealed.

(2) Notwithstanding the repeal of the Securities Act, 1993 –

- (a) any application pending before the Commission under the repealed Act shall be deemed to have been made to the Commission in accordance with the corresponding provision of this Act and the Commission shall ensure

that the application complies with the provisions of this Act and the applicant shall comply with any request or direction of the Commission to ensure that the requirements stipulated in this Act, with respect to an application, are complied with;

- (b) a licence, registration, authorisation or recognition granted in accordance with the repealed Act, whether to a company or an individual, shall be deemed, until expiry, revocation or cancellation of that licence, registration, authorisation or recognition, as provided in the repealed Act, to be a licence, registration, authorisation or recognition granted in accordance with this Act, but subject to any rights or benefits accruing, or any liabilities suffered, under the repealed Act, but without the right of renewal;
- (c) any investigation or proceeding commenced by the Commission and not concluded at the commencement of this Act may be continued by the Commission; and
- (d) any directions given in accordance with the repealed Act shall, unless contrary to this Act, continue in force until revoked, in accordance with this Act.

(3) On and from the commencement of this Act, there shall be transferred to, and shall vest in, or subsist against, the Commission, by virtue of this Act and without further assurance, all property, rights, liabilities and obligations that, immediately before the commencement of this Act, were the property, rights, liabilities and obligations of the Commission under the repealed Act.

(4) A securities exchange doing business before the commencement of this Act shall continue to operate as a securities exchange as if licensed in accordance with this Act, but shall, within twelve months of the coming into force of this Act, comply with the licensing and other provisions of this Act.

(5) All capital markets operators licensed, registered, authorised or recognised to do business in accordance with the repealed Act shall continue to operate as capital markets operators, but shall, within twelve months of the coming into force of this Act, comply with the licensing and other provisions of this Act.

(6) A company which at the commencement of this Act is carrying on any activity as a **private fund** shall make an application to the Commission, within a period of six months of the commencement of this Act, in accordance with this Act and be compliant with this Act.

(7) All capital markets operators licensed, registered or doing business, in accordance with the repealed Act, shall, within sixty days of the establishment of the Association of Capital markets Operators, become members of the Association.



## FIRST SCHEDULE (Section 7)

### THE SECURITIES AND EXCHANGE COMMISSION

*Seal of Commission*

1. (1) The seal of the Commission shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or the Vice Chairperson and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(3) Any document purporting to be a document executed under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

*Tenure of office  
and vacancy*

2. (1) A member of the Commission shall, subject to the provisions of this Schedule, hold office for a term of not more than three years and may be appointed for a further term of three years, except that a member shall only hold office for two terms.

(2) Upon the expiration of the term for which a member is appointed the member shall continue to hold office until a successor has been appointed, but in no case shall any such extension of the term exceed three months.

(4) The office of a member becomes vacant –

- (a) upon the member's death;
- (b) if the member is adjudged bankrupt;
- (c) if the member is absent, without reasonable cause, from three consecutive meetings of the Commission of which the member has had notice;
- (d) upon the expiry of one month's notice of the member's intention to resign from office given by the member in writing to the Minister;
- (e) upon the expiry of one month's notice of the member's removal given to the member in writing by the Minister;
- (f) if the member becomes mentally or physically incapable of performing the duties of a member; or
- (g) if the member is convicted of an offence under this Act or any other written law and is sentenced to imprisonment for a term of six months or more, without the option of a fine.

(5) The Minister shall, where the office of a member becomes vacant, appoint another member in place of the member who vacates office, and such member shall hold office for the remainder of the term.

*Proceedings of  
Commission*

3. (1) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

(2) The Commission shall meet for the transaction of business at least once in every three months at such places and times as the Commission may determine.

(3) A meeting of the Commission may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one third of the members so request in writing except that if the urgency of any particular matter does not permit

the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Commission.

- (4) There shall preside at any meeting of the Commission –
  - (a) the Chairperson;
  - (b) in the absence of the Chairperson, the Vice-Chairperson;
  - (c) in the absence of the Chairperson and the Vice-Chairperson, such member as the members present may elect for the purpose of that meeting.

(5) A decision of the Commission on any question shall be by a majority of the members present and voting at the meeting, and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

(6) Four members of the Commission shall form a quorum at any meeting of the Commission.

*Allowances for members*

4. There shall be paid to members of the Commission or any committee such travelling and subsistence allowances, as the Commission may, with the Minister's [this should be the Emoluments Commission as per the Constitution] approval, determine.

*Disclosure of interest*

5. (1) If a member or person is present at a meeting of the Commission or any committee of the Commission at which any matter is the subject of consideration, and in which matter that person or person's spouse, relative, friend or associate is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, take part in any consideration or discussion of, or vote on, any question relating to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

*Prohibition of publication of, or disclosure of, information to an unauthorised persons*

6. (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully published or communicates the information to any other person, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

*Immunity*

7. An action or other proceeding shall not lie or be instituted against a member of the Board or committee of the Board, or a member of staff of the Commission for, or in respect of, an act or thing done or omitted to be done in good faith in the exercise or performance of any of the powers, functions or duties conferred under this Act.

## PART II FINANCIAL PROVISIONS

### *Funds of Commission*

8. (1) The Commission shall be funded by –
  - (a) such sums as may be payable to the Commission from moneys appropriated by Parliament for the purpose;
  - (b) such sums as may be payable to the Commission under this Act or any other written law;
  - (c) such sums as may be levied by the Commission in terms of licence fees, transactions and any other levies imposed; and
  - (d) such sums of money or such other assets as may accrue to or vest in the Commission whether in the course of the exercise of its functions or otherwise.
- (2) The Commission may –
  - (a) accept moneys by way of grants or donations from any source in Zambia; and
  - (b) and subject to the approval of the Minister, accept moneys from any source outside Zambia.
- (3) There shall be paid from the funds of the Commission –
  - (a) where appropriate, salaries, allowances, loans, gratuities and pensions of staff of the Commission, and other payments for the recruitment and retention of staff;
  - (b) such reasonable travelling and subsistence allowances for staff, members of the Commission and members of any committee of the Commission, when engaged on the business of the Commission, at such rates as the Commission may, with the approval of the Minister, determine; and
  - (c) any other expenses incurred by the Commission in the performance of their functions.
- (4) The Commission shall perform its functions in accordance with sound financial principles and shall ensure as far as possible that its revenue is sufficient to meet expenditure properly chargeable to revenue.
- (5) The charge or fee imposed on any services and facilities rendered by the Commission shall be reasonably related to expenses incurred, or to be incurred, by the Commission in relation to the provision of the service or facility.

### *Financial year*

9. The financial year of the Commission shall be the period of twelve months ending on 31<sup>st</sup> December in each year.

### *Accounts and audit*

10. (1) The Commission shall cause proper accounts to be kept of its assets and liabilities and of its income and expenditure for each financial year.
- (2) The accounts of the Commission for each financial year shall be audited by one or more persons who publicly carry on the profession of accountants in Zambia, and who shall be appointed auditors to the Commission by the Commission with the approval of the Minister.
- (3) The auditor's fees shall be paid by the Commission.

### *Annual report*

11. (1) As soon as practicable, but not later than one hundred and eighty days after the end of the financial year, the Commission shall

submit to the Minister a report concerning its activities during the financial year.

(2) The report referred to in subsection (1), shall include information on the financial affairs of the Commission and there shall be appended to the report -

- (a) audited financial statements; and
- (b) such other information as the Minister may require.

(3) The report to be submitted in accordance with subsection (1), shall include the following:

- (a) the extent to which the Commission has fully implemented its regulatory oversight functions as provided under this Act and in its rules and the effectiveness of the operation of such regulatory oversight function;
- (b) the actual and projected cost savings to the Government, if any, resulting from operations of the Commission;
- (c) the actual and projected costs which the Commission and the public would have incurred if the Commission had not undertaken regulatory responsibility for certain areas under the Commission's jurisdiction;
- (d) the nature of the working relationship between the securities exchanges, clearing and settlement facilities and the Commission;
- (e) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Commission; and
- (f) the immediate and projected capabilities of the Commission.

(4) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay the report before the National Assembly.

## SECOND SCHEDULE (Section 22)

### REQUIREMENTS TO BE MET BY APPLICANTS FOR SECURITIES EXCHANGE LICENCE

For the purposes of section twenty-two, the requirements are as follows:

1. The applicant shall have financial resources sufficient for the proper performance of its functions.
2. At least five of the applicant's members shall be persons engaged in carrying on the business of dealing in securities independently of and in competition with each other.
3. The rules and practices proposed to be followed by the applicant shall be such as ensures that business conducted by means of its facilities are conducted in an orderly manner and so as to afford proper protection to investors. In particular, the rules of the proposed exchange shall make such provisions as the Commission considers satisfactory with regard to –
  - (a) efficient, honest, fair, competitive and informed trading in securities;
  - (b) the qualifications for membership of the proposed exchange;
  - (c) the exclusion from its membership of persons who are not of good character and business integrity, and the suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for contravention or failure to comply with the rules of the proposed exchange or the provisions of this Act;
  - (d) the conditions governing dealings in securities by members of the proposed exchange, and the class or classes of securities that may be dealt in by members;
  - (e) the carrying on the business of the securities exchange with due regard to the interests of the public;
  - (f) preventing a member of the proposed exchange from resigning where the proposed exchange intends to investigate any matter affecting that member or any of the member's representatives for the purpose of deciding whether to expel or to take disciplinary action against that member.
4. The applicant has made such provision as the Commission considers satisfactory for –
  - (a) clearing and settlement of dealings in securities ties to ensure that performance of transaction effected on the proposed exchange, and for the recording of such transactions;
  - (b) the effective monitoring and enforcement of compliance with its rules and the provisions of this Act and the rules made under this Act; and
  - (c) investigating complaints in respect of business transacted by any of its members.
5. The applicant shall be able and willing to promote and maintain high standards of integrity and fair dealing by its members.
6. The applicant shall have good corporate governance structures at Board and management levels so as to be able to put in place including the requirement that independent members of the Board should be in the majority in comparison to trading members.
7. Security clearance shall be undertaken before appointment of Board members and management.
8. Where the Board is of the view that the securities exchange board is not upholding the requirements specified in this Act the Commission shall have powers to dissolve the securities exchange board.